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ABSTRACT

Presenting testimony on S 2460, a bill to amend the Indian Self Determination and Education Assistance Act (PL 93-368), these hearings include the bill itself, the testimony of 10 people (federal government agency officials, tribal council presidents, and other tribal government representatives), and various submitted materials (letters, memorandums, etc.). Designed in response to significant problems encountered in the implementation of PL 93-368, this amendment is identified as one that will leave PL 93-368 intact but will add a new option whereby the American Indian tribes may elect to develop a comprehensive tribal plan for the administration and delivery of the total range of government services for which they are eligible. As described here, the Secretary of the Interior would be authorized to provide a consolidated single grant to implement these tribal plans, the intent being to greatly simplify the excessive paperwork generated by the contracting process and to allow for the necessary flexibility in local policy determinations by the tribes. The "Opening Statement" (Senator Abourezk) asserts that there has been no meaningful transfer of control in the implementation of PL 93-368 because the agencies (Bureau of Indian Affairs and Indian Health Service) have incorporated into the contracts their identification of priorities and policies rather than allowing tribes to make the determination, while the tribes have been restricted to formulating their policy within the narrow parameters of the current agency programs and budget allocations. (JC)

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AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

HEARINGS

BEFORE THE

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2460

TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

MARCH 14 AND 22, 1978

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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(III)

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AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

TUESDAY, MARCH 14, 1978

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:45 a.m., in room 357, Russell Senate Office Building, Senator Dewey F. Bartlett presiding.

Present: Senators Melcher, Bartlett, and Hatfield.

Staff present: Alan Parker, chief counsel; Kathryn Harris-Tijerina, staff attorney; and Michael Cox, minority counsel.

Senator BARTLETT. The hearing will come to order.

I would like to submit for the record the opening statement of Senator Abourezk on Senate bill 2460, to amend the Indian Self-Determination and Education Assistance Act and also a copy of that bill.

OPENING STATEMENT

OF

SENATOR JAMES ABOUREZK

S. 2460, to amend the Indian Self-Determination and Education Assistance Act.

I consider this measure as singularly important to the future course of Indian Affairs. The Amendment is intended to insure that Congress' original intent in passing the Indian Self-Determination Act is successfully implemented.

The Act states that it would "permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of those programs and services. (Sec. 3(b)) Since the Act was passed in 1975 and the regulations published over 1 1/2 years ago, Indian people throughout the Nation have encountered problems and barriers to the assumption of control over Bureau of Indian Affairs and Indian Health Service Programs. The Senate Committee on Indian Affairs conducted oversight hearings to investigate these problems with the implementation of Public 93-638, One of our hearings, held in Albuquerque, New Mexico, generated testimony from over 30 Indian Tribes and Tribal organizations. On the basis of Indian testimony and information gathered directly from IHS and BIA, it became clear that the intent of Congress has been frustrated because there has been no meaningful transfer of control

in the actual implementation of the Act. Rather, control has been retained by the agencies through a combination of factors. The Agencies have incorporated into the contracts their identification of priorities and policies rather than allowing Tribes to make the determination. Further, Tribes are severely restricted by having to formulate their policy determinations within the narrow parameters of the current programs and budget allocations of the agencies. Duplications of effort, excessive paperwork, and inhibitions against long-term planning in the contracting process have seriously undercut the intended Tribal control.

As a response to these significant problems, the Senate Committee on Indian Affairs will hold hearings on S. 2460.

The amendment leaves the present structure of Public Law 93-638 intact. It adds as a new option, however, the opportunity for Tribes to elect to develop a comprehensive Tribal plan for the administration and delivery of the total range of government services for which they are eligible under present existing law. The Secretary of the Interior is authorized and directed to provide a consolidated single grant to implement these tribal plans. The intent is to greatly simplify the excessive paperwork generated by the contracting process and to allow for the necessary flexibility in local policy determinations by the Tribes. Application of this comprehensive tribal plan, single grant process, would also greatly enhance the local management capabilities of the Tribes and enables them to engage in long-term planning. Finally the bill would solve many of the detailed procedureal problems

which the Tribes have encountered.

The Federal Policy of Indian Self-Determination has been adhered to by the past three Presidents of the United States, enacted into law by the United States Congress with the passage of Public Law 93-638, and unequivocally supported by the American Indian Policy Review Commission. Yet, even today the Indian has little true Self-Determination. Congress must insure that our policies are not idle rhetoric.

95TH CONGRESS
2D SESSION

S. 2460

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 30), 1978

Mr. ABOUREZK introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To amend the Indian Self-Determination and Education Assistance Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Indian Self-Determination and Education Assistance Act is amended by inserting after section 2 (b) the following new subsection:

"(c) The Congress further finds that—

"(1) the Indian Self-Determination and Education Assistance Act is intended to provide for an orderly transfer of the control of basic Government services and programs from the Bureau of Indian Affairs and the Indian Health Service to the Indian tribes and tribal

organizations by way of an expanded contracting authority; and

"(2) the intent of Congress has been frustrated because there has been no meaningful transfer of control in the actual implementation of this Act. Rather, control has been retained by the agencies through a combination of factors. The agencies have incorporated into the contracts their identification of priorities and policies, rather than allowing tribes to make such determinations. Further, tribes are severely restricted by having to formulate their policy determinations within the narrow parameters of the current programs and budget allocations of the agencies. Duplications of effort, excessive paperwork, and inhibitions against long-term planning inherent in the contracting process have seriously undercut the intended tribal control;

"(3) tribes have undergone excessively long delays in receiving contract approval or their applications have been disapproved because of a cited lack of funds; an agency decision which leaves the tribes without redress, since it is not grounds for a formal appeal. Even after contract approval, the tribal services and programs have been fiscally disrupted by the agencies' reimbursement voucher system of payment. Taken together these and

other factors have frustrated the clear intent of Congress; and

"(4) in an effort to effectively implement the Congress' intended transfer of control, a consolidated single grant authority which follows a comprehensive tribal plan is necessary. Further, it is consistent with Federal policy and the intent of this Act.".

(b) Such Act is further amended by adding at the end thereof the following new title:

"TITLE III—ELECTION TO RECEIVE SINGLE CONSOLIDATED GRANTS

"SINGLE CONSOLIDATED GRANTS

"SEC. 301. (a) Any Indian tribe or tribal organization entitled, under this Act, to enter into contracts with the Secretary of the Interior or the Secretary of Health, Education, and Welfare, or to receive grants from any such Secretary, for the purpose of enabling such tribe or organization to plan, conduct, and administer programs and projects for, and provide services to, Indians or to carry out certain functions, authorities, and responsibilities previously carried out by the Secretary of the Interior or the Secretary of Health, Education, and Welfare, may elect to receive a single consolidated grant in each fiscal year in lieu of

or in addition to contracts under sections 102 and 103 of this Act.

"(b) The Secretary of the Interior, in consultation with the Secretary of Health, Education, and Welfare, is authorized and directed to make such grants provided for in subsection (a) of this section to each Indian tribe or tribal organization having an approved plan submitted in accordance with this title.

"PLANS: APPROVAL

"SEC. 302. (a) Any Indian tribe or tribal organization which elects to receive a single consolidated grant in lieu of or in addition to the contracts under sections 102 and 103 of this Act shall submit to the Secretary a plan for providing or carrying out any, some, or all such programs, projects, functions, activities, or services referred to in section 303 of this title. Such plan shall set forth a comprehensive description of the programs, projects, functions, activities, and services to be carried out or provided by such tribe or organization from the proceeds of such grant. The plan may be for up to ten years to allow for long-term planning or for any lesser amount of time the tribe or organization may elect. Either before the grant or after a reasonable period of implementation the tribe or organization may amend the plan.

"(b) The Secretary of the Interior shall upon the

request of an Indian tribe or tribal organization provide technical assistance for the formulation of their plan either directly or through contract. In the awarding of contracts for technical assistance, preference shall be given to an organization designated by the tribe or organization, or in the event there is not a designation, the Secretary shall give preference to Indian organizations. The Secretary is directed to provide whatever assistance and expertise is needed to implement the plan with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the programs within the plan, (4) community understanding of the grant, (5) adequately trained personnel, and (6) other necessary components.

"(c) (1) Upon the receipt of a plan submitted by such tribe or tribal organization, the Secretary of the Interior shall have ninety days to review and make a determination on whether (A) the service to be rendered to the Indian beneficiaries of the particular program or function planned will be adequate; (B) adequate protection of trust resources is assured; (C) the proposed project or function in the plan can be properly completed or maintained by the plan.

"(2) In the event the Secretary of the Interior disapproves all or any portion of a plan, he shall (A) state his objections in writing to the tribe or organization within sixty days, (B) provide to the extent possible assistance to the

tribe and tribal organization to overcome his stated objections, and (C) within thirty days following such statement of objections, provide the tribe or organization with a hearing at their request under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

"(3) If the Secretary of the Interior does not send any written notification of disapproval of all or any portion of such plan within ninety days of its receipt, such plan shall be deemed to be approved in its entirety.

"(4) The Secretary of the Interior shall not disapprove any plan because of the percentage of funds devoted to a particular program, project, function, activity, or service.

"(5) Tribal determinations of need, priorities, and substantive programing as expressed in the plan will only be evaluated by the Secretary on the basis of the criteria set forth in section 302(c)(1) above. Consistent with the United States policy of tribal self-determination, as set forth in this Act, the guidelines to be followed in evaluating such plan shall be whether approval of the plan would constitute a failure as trustee to uphold the rights of the beneficiaries, and not whether the tribal policies reflected in the plan are consistent with the judgment of the reviewing official or officials.

"(6) The Secretary of the Interior shall approve any

plan which requires funding up to the amount that the appropriate Secretary would have otherwise provided for his operation of the program, or portion thereof, for the period covered by the plan. The amount shall include direct costs, indirect costs, and administrative costs for the operation of the program. If a tribe or tribal organization submits a plan which requires funds in excess of such amount, the Secretary shall, upon the request of the tribe, conditionally approve the plan up to the requested amount. Thereafter, the Secretary is directed to submit to the Appropriation Committees of both Houses of Congress as an appendix to the Presidential budget request, a list by tribe comparing the amount the tribe will receive under the Presidential budget request in comparison to the tribal estimate of need under the tribal plan. If the Congress later appropriates the tribe's estimated need, rather than the President's request, then the prior approved plan will have its funds increased by a like amount.

"(7) The Secretary is authorized to require any tribe requesting that he provide a single grant pursuant to the provisions of this title to obtain adequate liability insurance. Each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount the nature of which are within the coverage and limits of

the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

"PROGRAMS

"SEC. 303. All programs, projects, functions, activities, or services for which the Interior Department or the Department of Health, Education, and Welfare are authorized to perform for Indians may be included in any plan submitted pursuant to this title.

"SANCTIONS

"SEC. 304. (a) Regardless of the length of time for which the single consolidated grant is planned, the Secretary of the Interior shall conduct an annual audit of the use of grant funds in order to insure that the total amount granted under the plan was spent directly or indirectly on the intended services. The tribe or organization shall retain the right to determine the priorities within the plan as long as the total amount was spent within the plan.

"(b) If the audit finds funds were used for purposes other than the plan, then the Secretary shall notify such tribe or organization that, if corrective action is not undertaken within ninety days, further payments may be withheld to

such tribe or organization under that portion of the plan affected by the misuse of funds. If no corrective action is taken, the Secretary is further authorized to notify such tribe or organization to return to him all or any part of the unexpended sums paid under this title during that fiscal year pursuant to the affected portion of the plan.

"(c) Except to the extent otherwise provided in subsection (a) of this section, the provisions of section 5(b) shall be applicable to any financial assistance provided pursuant to this title.

"CONTINUATION OF SERVICES

"SEC. 305. In any case in which the Secretary of the Interior has taken an action under section 304 of this title which results in vital services not being provided to individuals who were the beneficiaries of such services under such plan, the Secretary of the Interior shall take such action as may be necessary to provide for the continuation of such services for the fiscal year covered by such plan.

"PAYMENTS

"SEC. 306. Payments made pursuant to this title shall be made in advance and may be made in installments with necessary adjustments on account of overpayments or underpayments as the Secretary may determine.

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"AUTHORIZATIONS

"SEC. 307. The Secretary of the Interior is authorized to provide any approved plan with funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto.".

Senator BARTLETT. We have several witnesses today.

Would you raise your hands as I call your names?

Joseph DeLaCruz, president of the Quinault Tribal Council; Allen Rowland, president of the Northern Cheyenne Tribal Council.

Mr. RISINGSUN. I am representing Mr. Rowland.

Senator BARTLETT. Rose Crow Flies High, president of the Fort Berthold Tribal Council.

Gordon Jackson, Kake Tribe, executive director, Rural Alaska community action program.

Would the others please introduce themselves?

Mr. LITTLE OWL. I am Ron Little Owl. I am vice chairman of the Three Affiliated Tribes.

Mr. KENNEDY. Ed Kennedy.

Mr. MORISHIMA. Gary Morishima, Quinault.

Senator BARTLETT. Thank you.

I have Joseph DeLaCruz as the first witness.

STATEMENT OF JOSEPH DELACRUZ, PRESIDENT, QUINAULT TRIBAL COUNCIL; TED RISINGSUN, REPRESENTING ALLEN ROWLAND, PRESIDENT, NORTHERN CHEYENNE TRIBAL COUNCIL; ROSE CROW FLIES HIGH, PRESIDENT, FORT BERTHOLD TRIBAL COUNCIL; GORDON JACKSON, KAKE TRIBE, EXECUTIVE DIRECTOR, RURAL ALASKA COMMUNITY ACTION PROGRAM; RONALD LITTLE OWL, TRIBAL COUNCIL, THREE AFFILIATED TRIBES; ED KENNEDY, COMPTROLLER, NORTHERN CHEYENNE TRIBE; AND GARY S. MORISHIMA, PROGRAM MANAGER, QUINAULT NATION

Mr. DELACRUZ. Mr. Chairman, I am Joseph DeLaCruz.

We would like to address this situation in a panel forum.

I would like to just make a few opening remarks about S. 2460 and save my statement until the rest of the panel members have concluded.

There are problems that the tribes are having with self-determination and Public Law 93-638, which this bill is supposed to address.

I am sure that the members of this panel will share some of the problems that our people are facing with the legislation, the administration, OMB, and problems that we are having among ourselves.

We have some of our Indian people walking across the country trying to bring the American public's attention to some of teseh problems. Those people have been walking through some very tough weather.

With what is happening to the Indian situation in the United States, because of the backlash over various Indian treaty rights and resources, I think that the Self-Determination Act and this bill will help a lot toward true self-determination of the Indian tribes.

With that, I would like to call on Rose Crow Flies High from the Three Affiliated Tribes to give her statement. Her vice-chairman also will participate.

Ms. CROW FLIES HIGH. Thank you.

I am Rose Crow Flies High, tribal chairperson of the Three Affiliated Tribes of the Fort Berthold Indian Reservation in North Dakota.

I welcome the opportunity that you have given me to come and talk before this committee.

I will now introduce Ronald Little Owl to carry out my statement.

Mr. LITTLE OWL. Thank you.

Mr. Chairman, on behalf of the Three Affiliated Tribes and speaking for our tribal chairwoman, Ms. Crow Flies High, I would like to read the March 14, 1978, testimony before the Senate Select Committee on Indian Affairs.

Self-determination to me is promoting the general welfare of my tribe. We must utilize our resources in an equitable manner. We must educate our children so that they may have a better understanding of just what BIA really is.

Most important, we need our children more educated to find a place for themselves in this world.

Presently, we need to make possible a more hopeful, self-sustaining, and honorable living, both socially and economically.

This, honorable Senators of this select committee, is what my constitution and bylaws tell me we must do. This is my goal.

I realize the goal is big, but it is a good goal. Many of my people have died waiting for us to reach this goal.

Now let us look at BIA's goal.

I have had the opportunity to observe BIA for quite some time. I have been on the Tribal Business Council for almost 12 years.

Just recently, since Public Law 93–638 has become effective, I have been forced to observe BIA more closely—because we are supposed to take over.

BIA's goal is not broad like ours, but it seems more complicated to me. BIA's goal is to survive.

As long as there are Indians on reservations, I believe BIA will continue to be successful in achieving their goal.

Now the big job I have to do is to take BIA's goal—survive—and spread it, like frosting on a cake over my goal.

I believe I understand the recipe of their goal; but, unfortunately, I don't have all the ingredients to make it work.

The goal of Public Law 93–638 is the same as my goal. Public Law 93–638 is your goal because you made the law.

This hearing today, I would think, is to find out or assess the performance in achieving your goal. I am sure you will find out that it is not working well.

Your goal and my goal are the same. I think that if you would agree with me on BIA's goal, this hearing will have accomplished a lot.

Public Law 93–638 gives us at the local level the right to begin a policy for BIA to follow. Our tribes' constitution and bylaws give us the right to recommend removal of any BIA official who is not performing his duties.

With these two powerful tools, I don't know why I would want to take over BIA or contract many of their programs. We tried to exercise one of these powers once. We tried and nothing happened. We are still getting the runaround.

This past spring BIA brought their budget for our input 1 day before it was due at the area level. Then afterwards at a BIA areawide meeting, they wanted our input 1 day before they forwarded their budget down here.

Of course, the budget is for a fiscal year 2 years down the road; but, at the same time, BIA is operating on a budget that was passed 2 years ago.

Public Law 93–638 has taught me to understand that.

Last spring, we submitted our 93–638 self-determination grant proposal with a supportive tribal resolution. Within the budget, we had a salaried management position for 7 months that was equivalent to $30,000 per year. We also had a position for an in-house attorney.

We wanted somebody qualified to interpret all these goals, objectives, and means that you have put forth so that we could use them wisely to help our people.

BIA told us nobody was worth $30,000 per year; and we couldn't hire an attorney as an employee. We went ahead and filled the position, but BIA won because both employees are gone.

Just recently, BIA approved our in-house attorney's contract, but he has been gone for 4 months.

The management people we had spent considerable time cleaning up our backyard first. They developed and implemented possibilities to administer programs that we presently have under management. They developed a whole new internal management structure for the tribe. They developed the indirect cost proposal with multiple rates for different Federal agencies.

Indirect costs for fiscal year 1978 were limited to a 13-percent rate for BIA programs. Why didn't BIA or you tell us that? We could have developed a management structure around the 13-percent rate and survived.

I believe the internal management structure that our 93–638 management team has set up is the most effective.

Because none of us can become fully aware of all the regulations or basic responsibilities that we have to the funding sources, we are at the mercy of our program directors and the funding sources.

Most tribes have over 30 different grant programs from many different agencies. We never get involved until the program is in trouble or shut down.

Our 93–638 team found us out of compliance as far back as 4 years with some programs. One program never was audited since its inception in 1974. That program is shut down, but now we are still held accountable for those funds—day-care center.

Part 151, title 25, Code of Federal Regulations, pertains to grazing regulations on Indian reservations. This area deals with our most important resource—land.

Part 151 is very weak. For example, it is without specific procedures for prosecution of violators of grazing privileges.

As a result, there exists a natural tendency to violate grazing privileges and make BIA reluctant in initiative to monitor grazing regulation compliance.

BIA tried to force us to prosecute violators in tribal courts, which we presently do not have the jurisdiction to do in this matter.

A grazing lease is between a lessee and BIA. BIA is the administrator of the lease.

More important, we are denied in 93–638 from dealing with trust responsibility in regard to land.

I don't think BIA brings these problems to you, because I have not seen nor heard any changes in title 25, Code of Federal Regulations, since it was adopted.

You gave us Public Law 93–638, and I am grateful. But somehow I feel I am doing somebody else's job.

BIA has never been held accountable to anybody here or anywhere. I think in your terms you call it assessing performance.

Sure there has been a lot of study done on BIA, but those are studies—because I have never seen any heads roll.

The only time BIA is looked at, is when they submit their budget. But then only their budget is assessed.

You, or the Office of Management and Budget, by natural habit chop here and chop there. This last time you passed us instead of BIA. You chopped our indirect cost moneys channeled through BIA.

I don't think you would be effective if your budget was cut for your staff. But I forgive you for that. It would be an honest mistake, because BIA is very complicated.

Remember their goal I told you about—survive. BIA has been around almost as long as we Indians. We have shared some of our secrets with BIA, but they have never shared theirs with us. We thought we needed them, but I think they need us.

We Indian people are at fault too. You probably have heard many conflicting views about 93–638 from us. We are like the farmers of this country. We lack unity and have self-interests. Try and dismantle the Department of Agriculture once, and the farmers will be on the warpath.

BIA and the Department of Agriculture are like twin brothers—nobody assesses them, and they continue to grow into powerful, complicated bureaucracies.

My tribal members, while waiting for us to achieve our tribal goal, have set their goal. They have become very select in electing honorable leaders who will stand by them. Most important in their goal is the fact that everybody votes in our elections. We have 100 percent voter turnout in our tribal business council elections on the Fort Berthold Indian Reservation. That has been their self-determination. However, BIA has a way of changing leaders.

I have worked with, and will continue to work with, BIA to help my people. I have worked out some problems with BIA, but these have been very small problems. A larger problem still exists.

I shall not change in my belief and goal for my people.

Thank you, Mr. Chairman.

Senator BARTLETT. Thank you very much.

Mr. DELACRUZ. Mr. Chairman, I would like to have Gordon Jackson from Alaska now.

Mr. JACKSON. My name is Gordon Jackson. I am the president of the Rural Alaska community action program.

I don't have any prepared statement this morning. Most of my comments are impromptu.

We plan to send a statement for the record within the next week or so.

Mr. Chairman, in Alaska, Public Law 93–638 has caused some considerable problems there.

We generally agree with the intent of the act and feel very strongly that there are a lot of amendments that have to be developed to implement that act in Alaska.

One of the biggest ones that I foresee, which will continue to cause problems in Alaska, is the current definition within Public Law 93–638 regarding the tribe in the State of Alaska.

As you know, it includes any village, village corporation, or regional corporation. The organizations that generally implement contracts under Public Law 93–638 are the Native associations.

I would continue to urge—and I feel like a broken record whenever I say that—but I personally think it needs to be addressed not only by this committee but perhaps they might consider looking at Alaska as an amendment to create a commission to study the Indian government situation in Alaska.

During the past 60 years—or over 100 years—there have been a number of entities created by the Federal Government, which include reserves and reservations, IRA's regional and village corporations, Native associations, and things like that.

I personally think it is time for the Federal Government to look at the total situation and also look at the State government situation.

I come from the Kake Village Corp. Under the term of Public Law 93–638, I can belong as a member to five tribes. Five tribes include the Sealaska Corp., the Kake Tribal Corp., the IRA Corp., the Tlingit and Haida Central Council, and the traditional governments.

As a member of the Kake Tribal Corp., I belong to five tribes.

When it comes to contracts in the State of Alaska, you have a situation whereby you have to have positive resolutions for the Native associations to contract.

According to a survey we did last summer, the Tanana Chiefs Conference had set aside and spent $40,000 getting positive resolutions from the villages within their region.

I personally feel that that is an excessive amount to implement the Indian Self-Determination and Education Assistance Act.

Now on indirect, on Native associations, let me give you a little background on that.

In the early 1970's they were created mainly to seek a fair and just settlement of the Alaska Indian Claim Settlement Act.

After the Act passed, there were a number of them continued as Native associations. Most of their administrative costs were funded by the community action program in the State.

During the Nixon era, he wanted to terminate the community action program about 1973. As a result of this, Native associations began to seek extra grants and contracts to fund their administration by way of indirect. That began in 1973. Expansion within the past several years has been phenomenal. As a result of the increase and the expansion of the programmatic activities, you also have an expansion with indirect.

We have a number of problems with indirect. A lot of it is very inconsistent throughout the whole Federal Government. For instance, in the implementation of some of the programs within the Alaska Federation of Natives, we had a number of grants and contracts.

Training grants are subject to indirect cost limitation of 8 percent. State grants give zero indirect. In some Bureau programs, they also gave indirect.

It makes a lot of nonsense to go through the process of development of an indirect cost rate with the cognizant agency and the Federal

Government does not adhere to that policy of accepting a rate audited by the Federal Government.

During the past indirect cost crisis, there are a number of Native associations in the State that have gone through a number of crises. For instance, the Cook Inlet Native Association had budgeted an $800,000 indirect cost allocation. Their allocation this next contracting period is about $200,000.

So you see the real parameters of this problem, in that if they aren't given the indirect cost that is granted through their covenants at the agency, then those Native associations are going to go bankrupt.

That includes Yupiktak Bista, the Tanana Chiefs Conference, Tlingit and Haida Central Council. Those Native associations are the only delivery system available in those areas. The State has no delivery system; the Federal Government has no delivery system.

So if they go bankrupt, Mr. Chairman, there will be no delivery system for Native associations for the provision of services under Public Law 93–638.

The cost-reimbursable contract, in my opinion, is the biggest cause of increases in indirect costs. You have to spend money to get it back.

Other things that happen with the cost-reimbursable-type contract is that you are audited four times. The first time you are audited is when you negotiate with the Bureau of Indian Affairs and the Indian Health Service. They look at your budget and say that this amount of travel is excessive; we are cutting that out. This position is not needed; we are cutting that out.

The second time you are audited is when the vouchers are sent in to the Bureau of Indian Affairs. They look at the vouchers and say, my goodness, you are not going to get reimbursed. This allocation or this expenditure is not needed.

The third time you are audited is by virtue of the fact that the board of directors require an annual audit of the Native association.

The fourth time you are audited is when you are audited by the Office of Audit Investigation and Review within the Department of Interior.

So, you see, it is the biggest cause of increases in indirect, in my opinion, and that should be addressed.

Another thing I would like to talk about is the formula based on population. The Alaskan Indian Claims Settlement Act accepted 25 or more natives as the number needed to establish a native village within the State. It is based on a 1970 census.

The Alaskan Indian Claims Settlement Act roll showed that the 1970 census is way off base; and that really should be addressed.

I would just like to say one more thing before I turn it over to the next witness.

This is on the budgeting cycle that you have proposed.

We have worked with the planning and budgeting process within the community action program, and the planning process is fine. However, unless you have enough dollars, the planning process is moot.

I would certainly hope that the planning process would be funded by enough dollars so that you can, indeed, have an adequate needs assessment and other things that are needed to make a planning process work.

Basically, that is my statement. I thank you very much.

Senator BARTLETT. Thank you, Mr. Jackson.

Mr. DELACRUZ. Thank you, Mr. Chairman.

Mr. Ted Risingsun will make the next presentation on behalf of the Northern Cheyenne Tribe.

Mr. RISINGSUN. Thank you.

My name is Ted Risingsun. I am an enrolled Northern Cheyenne from Busby, Mont., and an elected representative of my community serving on the Northern Cheyenne Tribal Council.

I have been chosen to represent my tribe in testifying on Senate bill 2460. Our testimony will confine itself to the area office involvement in contracting with the Northern Cheyenne Tribe.

The fact of the matter is that when you talk about area office involvement, you must question the degree of honesty on the part of the area office officials.

Since 1973, these area office officials have consistently abused the true missions of "trust responsibility" and "advocacy" for the Northern Cheyenne Tribe.

The Billings area office has repeatedly violated their trustee responsibility in that it has, rather than the tribe, determined what is best for the Northern Cheyenne people. They have done this through the selective use of congressional enactments and the accompanying regulations, the planning document known as the band analysis, punitive actions, and the general negative attitudes of individual Bureau of Indian Affairs employees.

The enabling factor for the area offices to accomplish this, unchecked, is the lack of administrative accountability.

The area office demands one financial/management report after another from the Northern Cheyenne contracting staff; yet, who demands such reports from these area office officials?

When asked for reports, no one really seems to know and the standard answer is: We don't know, or: The Albuquerque Data Center is temporarily out of order.

We can only conclude that this lack of accountability is a conscious effort on the part of the midlevel bureaucrat to deny adequate communication or information sharing between the tribe and the Bureau of Indian Affairs.

Without the information-sharing and solid communication lines, contract negotiations become mockeries of Public Law 93–638.

The tribe, through contracting, has noticed several nonproductive functions or activities. These are:

Grant Officers Representative.—These positions do not have any authority; they provide no product. For example, we have seen our grants officer's representative once in the last 18 months.

Contracting Officers Representative.—Nonfunctional position unnecessary interim step. These people do not have signature authority, do not provide local decision, and most times are created to protect Bureau employees who ordinarily would be riffed because of tribal contracting.

Training and Technical Assistance Officers.—The question is what do these people do? The positions created reduce the available money resources to the tribes. Had responsible individuals been placed in these slots, it would be understandable but this is not the case.

While addressing training and technical assistance, let us add that all the employees of the area office should be geared to providing technical services to the tribes. Just this week we had a division chief refuse to provide technical advice concerning a graveling project. Other times, Bureau of Indian Affairs employees have come to the tribe, assisted in formulating work programs, and later rejected those same plans as unacceptable, as was the case with the Johnson-O'Malley project.

The Northern Cheyenne, in particular, have been penalized for being aggressive in protecting their various resources. We have been relegated to the back burner whenever special contracting opportunities become available, such as specific management improvement opportunities.

The Billings area office does not award management contracts under an equitable criteria. They base the award on popularity contests and political bartering—not on technical merits of the proposed activity.

A good case in point involves the methods in which the contract support funds have been spent during fiscal year 1976 and fiscal year 1977 for management contracts.

Also, a scrutiny of 1978 training and technical assistance dollars will further verify this practice.

To date, the tribes receive only the residue of any appropriations authorized by Congress. Our investigations have indicated that the bureaucrats are taking anywhere from 40 percent and upward from each authorized category. This is in addition to the line items authorized for Bureau administration.

Also, a closer scrutiny of Bureau permanent slots and temporary slots will give you an idea of administrative overloads. Here, again, should a tribe question this practice, the area office slowly deletes personnel slots from the agency and transfers those slots to an agency that does not question area office activities.

The Northern Cheyenne Tribe has IPA'd 16 slots since 1975 just to save the Billings area from losing the slots.

Since we have been in an adversary role, the local agency has been penalized each time an employee is transferred. In short, the slots are not filled or the slots are transferred with the employees.

While this continues, we look with optimism to the Bureau of Indian Affairs central office with its new strong leadership potential in Mr. Forrest Gerard to begin solving these many issues presented here today.

The Northern Cheyenne Tribal Council has been most active in accepting the responsibility of exercising the opportunity of contracting Federal program trust responsibilities heretofore operated by the Department of Interior, the Bureau of Indian Affairs, and the U.S. Indian Health Service, which is an administrative responsibility of the Department of Health, Education, and Welfare.

We currently have in operation some 40-odd contracts or grants entered into with these two agencies. We exercised the right to contract immediately upon the availability of the right.

In doing so, we have encountered every known obstacle in the actual enforcement process of 93-638, either at the agency or the area office.

The Bureau of Indian Affairs has attempted to thwart, interpret,

or ignore the congressional intent in the original writing of Public Law 93–638.

The tribe, in turn, has been instructed that it must contract; that it cannot contract; or that the desires of the tribe do not fit the 638 program.

Gentlemen, Public Law 93–638, as we see it, is not and was not intended to be a program. It is administrative guidance or, more commonly, management direction.

This direction was intended for all Federal agencies dealing with Indian nations, whether it be the Department of Agriculture or the Department of Commerce.

The congressional intent, unfortunately, has been circumvented by entrenched bureaucrats who knowingly issue management directives that completely contradict both the letter and the intent of the law of the land.

Now we see Senate bill 2460 as an opportunity for the tribe to do what we have not currently been able to do and that is to provide for comprehensive long-range packaging of tribal needs and desires.

In addition to this vital planning mechanism, the Northern Cheyenne Tribe firmly believes that the Bureau of Indian Affairs officials will assume an integral role of advocate rather than adversary.

The Northern Cheyenne Tribal Council, therefore, supports the amendment to Public Law 93–638.

In conclusion, we hope that the frankness expressed today does not initiate new reprisals and punitive actions against the Northern Cheyenne Tribe.

Thank you.

Senator BARTLETT. Thank you very much, Mr. Risingsun.

Mr. DELACRUZ. Mr. Chairman, I have quite a lengthy statement. I am going to ask one of my technical staff from Quinault, Gary Morishima, to highlight it and we will submit the full statement for the record.

Senator BARTLETT. That will be fine.

[The prepared statement of Mr. DeLaCruz follows:]

TESTIMONY OF JOSEPH DELACRUZ, PRESIDENT, QUINAULT NATION, STATE OF WASHINGTON, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS RE: S. 2460, AMENDMENT TO PUBLIC LAW 93-638

I am pleased to appear before the Committee today to testify on S. 2460, which proposes to amend the Indian Self-Determination and Education Assistance Act (P.L. 93-638). With me today is Gary Morishima, a member of my technical staff. In the two years since P.L. 93-638 has been implemented, the BIA and tribes across the nation have experienced varying degrees of difficulty in dealing with the fundamental changes brought as a result of this landmark legislation.

My testimony today will not dwell upon problems of P.L. 93-638, but will instead concentrate upon certain positive things, including S. 2460, which should be considered for implementation to improve the process of self-determination.

I would like to preface my remarks by stating that in our opinion, P. L. 93-638 and the implementing regulations are basically sound. Because the concept of P.L. 93-638 necessarily cuts across organizational lines and involves philosophic issues relating to federal responsibility, it is our belief that the problems and frustrations that many tribes are presently experiencing are manifestations of deeply-rooted problems which have resulted from a long and complex history of more than 200 years of federal-Indian relations. We conclude that these problems are not simply

the result of P.L. 93-638 or institutional deficiencies which may have become entrenched within the BIA. What the Self-Determination Act has done is just added visibility to some of those problems enabling Indian tribes to become more directly involved in BIA and IHS operations. The net effect of this participation has, in many cases, resulted in a widening rift of BIA-Tribal relationships - the Tribes and the BIA have now, more than ever become adversaries and the Bureau is beginning to lose the support of the people it has been established to serve.

The time has come for Indian country to stop and assess what's happening. We are not used to assessing conditions with a cold, perceptive, and calculating eye. We are instead used to dealing in the nebulous world of emotion and intuition. We don't analyze; we feel; and what we feel is confusion, consternation, and anger. For two centuries, we have been tied up in a black bag, suspended in atmosphere of politics and social reform. We have been pushed and shoved and punched and pulled from all directions. Where are we going? What is being done to us? What are we doing to ourselves? Why is what's happening, happening? We are confused and seemingly powerless to see outside the bag. Have we become puppets who are manipulated to dance at the whim of some grand design to carry out our own genocide under the guise of self-determination? Are we unwittingly playing a role in classic military strategy in helping to isolate and destroy a common "enemy"? Are we playing into the hands of those who wish

to subvert or repress the moral and legal obligations of the federal government to recognize and deal responsibility with our fundamental human rights? We have no answers; only questions. We cannot help but feel and wonder.

This much, however, is clear. All the laws, regulations, and administrative direction in the world will not change the problems we have experienced throughout Indian country in trying to exercise self-determination because attitudes cannot be legislated or mandated. There are dangerous undercurrents in this whole issue that we must be acutely aware of less we be swept away. I cannot help but be reminded of the forester who accidentally fell off a cliff and desperately clung to a tiny branch. "Lord, save me," the forester appealed. Much to the forester's surprise and consternation, a booming voice replied, "My son, do you have faith?" "Oh yes" the forester responded without hesitation. To which the voice answered, "Then, let go."

At this time in history, we must carefully assess our strengths and weaknesses and design a workable, positive plan to begin to help shape our own destiny - this is true self-determination. We must resist the strong temptation to seek a convenient scapegoat; we must not succumb to the enthusiam of a mob mentality and point wagging fingers at anyone, including the BIA. To be sure it would be easy to yield to this temptation and point a finger at the BIA as a self-perpetuating, money-gobbling, inefficient monstrous Bureaucracy, but to what purpose? Only further polarization and suspicion could result. Please, don't misinterpret my comments; the BIA is fraught with serious

internal problems which require corrective action, but we must all recognize that those problems have not been totally of the Bureau's own making and that dwelling upon the past will not help improve our future. The Bureau has evolved over 150 years of vacillating federal policies from annihilation, assimilation, termination, and now self-determination; let us all recognize that the Bureau is by no means perfect, but it has been an illegitimate and unwanted child of federal policies for which we must all share a joint responsibility.

Before Indian self-determination can become reality, the fundamental character of the entire federal government must be transformed into one of advocacy. Make no questions about it, self-determination is a double-edged sword with real potential opportunities but also very real dangers of a subtle and insidious nature. My brother from the Cherokees could well be right that "P.L. 93-638 will not only do away with the BIA in very short order, but will terminate the tribes of this nation from government services and responsibilities". I have no magic solutions as to how these dangers can be avoided or how to bring about the promise of self-determination and the removal of the threat that it presently carries.

But I digress, we are here to discuss S. 2460 and P.L. 93-638 and this is not the proper forum to discuss my personal ideas relative to fundamental changes within the federal Indian relationship or even the operations of the BIA.

As presently enacted, we concur with the Navajo and Puyallup Tribes that P.L. 93-638 is not a self-determination law, but rather an enabling law which permits tribes to contract to operate programs which the BIA or IHS has failed to run satisfactorily. If these organizations were providing services efficiently then, tribes would have no need to consider contracting--given the assumption that deeply intrenched problems within the Bureau and IHS are not likely to improve substantially in the near term, tribes must either contract to provide services to its people or sometimes suffer the consequences of unsatisfactory performance secured at extraordinary costs.

As proposed legislation, S. 2460 would provide a valuable addition expand the options available to tribes in their quests for self-determination by allowing for consolidation of grants and contracts. We support this legislation. There are, however, certain modifications to various aspects of the bill which we would like to offer for your consideration.

First, although authority to consolidate Interior or H.E.W. programs would be helpful, we recommend that the legislation be expanded to cover any functions performed for an on behalf of Indian people by any federal agency. This would help overcome the notion that self-determination policies only affect Interior and H.E.W. by clearly recognizing that those policies apply to all federal organizations. More fundamentally, such an action would provide an opportunity to eliminate a great deal of

administration costs and help to alleviate problems of piecemeal funding of major project efforts.

Secondly, we recommend that tribes be given the option of consolidating programs to any degree desired. Rather than restricting the concept to a single master grant or contract as is presently embodied in the proposed legislation, we propose that tribes should be able to decide whether it would prefer to operate under one, two, or a hundred contracts. Such authority would enable tribes to assert greater flexibility and control within its own operations.

Third, we request that the term consolidation be clarified to avoid future confusion and problems. From first hand experience, the Tribe has learned that consolidation can mean many different things. Our law enforcement contract consists of a "consolidation" of five contracts which were formerly administered individually. Although we now have one master contract, we are still forced to maintain separation of funds from each of the five sources within our accounting system because those sources come from different Bureau allocation categories. Such consolidation may relive some administration by the BIA, but certainly does little to improve the efficiency of our operations.

Fourth, we support the concept of long-term planning and a moral commitment to provide the support necessary for orderly progress and development. Such an avenue may help alleviate the feeling in Indian country that self-determination will inevitably lead to self-termination. (See GAO Study HRD-78-59, Indian Self-Determination Act -- Many Obstacles Remain) The concept, however,

is in need of greater refinement. In Section 302(a), the term reasonable period of time must be defined to offer administrative guidelines to be formulated. Rather than casting a tribal plan in bronze, once it has been submitted, we would suggest that a process including determination of time constraints for revision be established for plan amendment. We support the concept behind improved visibility of tribal needs by the Appropriations Committees. Consideration must also be given to potential problems of plan amendment related to reprogramming procedures established by OMB and appropriations committees. In order to avoid such problems, we suggest that consistent with c(2) of the stated findings contained in S. 2460, Tribes be given the latitude to alter their plans of operations to reflect changes in their internally determined priorities so long as their expenditures do not exceed the total appropriated amount. Although such language may be contained in 304(a), further clarification may be necessary to avoid misunderstandings.

Fifth, the eventuality of retrocession (either by initiative of the Tribe or by the Secretary under Section 304) of all or any portion of a consolidated grant must be addressed. We would recommend that any implementing regulations promulgated pursuant this Act be patterned after those already developed for usual 638 contracts. It may be that plans approved subsequent to the amendment (S. 2460) would automatically be subject to rules and regulations generally covering P.L. 93-638, but we were uncertain of the intent.

Sixth, we recommend that, if necessary, Section 302(b) of the Act be amended to include authorization for appropriation of funds necessary to enable tribes to develop comprehensive plans which are satisfactory to the Secretary.

Seventh, the language of Section 302(c) referring to the plan approval process must be carefully structured in recognition of the potential and likely eventuality that an adversary relationship between a tribe and a BIA or IHS office could preclude tribal participation and perpetuate subserviency. Although the Act contains provisions (304 C-2) which direct the Secretary to provide such assistance as may be possible to overcome deficiencies in the proposed plan, we are also concerned that improper administration of technical assistance in this area could lead to problems similar to those experienced under P.L. 93-638. Moreover, it may be necessary to address certain questions concerning the degree to which the Secretary may delegate plan approval authority and clarification of procedures which must be followed in the event of disapproval similar to the manner in which declination issues are outlined for P.L. 93-638. If the three criteria as set forth in section 302 (c) are to be the only declination issues, then it must be clearly stated rather than implied. The phrase "(The Secretary shall) provide the tribe or organization with a hearing at their request under such rules and regulations as he may promulgate (emphasis added)" poses obvious potential dangers to tribes.

There also appears to be an inconsistency in the requirements of the Secretary in the event of plan disapproval. Section 302 C(a)(A) states that the Secretary shall submit objections in writing within 60 days (presumably of the date of plan submittal, but not specified by the Act) while Section 302C(3) provides automatic approval if no disapproval is received after 90 days. Two obvious questions arise: 1) what happens between 60 and 90 days?; and 2) what guidelines would prevent the Secretary or his designate to frustrate tribal attempts to implement an "automatically" approved plan? Is Secretarial oversight intended to be restricted to financial audits after plan approval under Section 304? The principal point is that a proper balance must be struck between the proper exercise of the Secretary's responsibility and the desires of the Tribe, or else the entire plan approval process could easily degenerate into one of repression.

We support Section 306 allowing for advance payments; such a provision would do much to alleviate some fiscal management problems resulting from our present cost reimbursable voucher payment system.

Our major objection to the Act concerns Section 302 C(6) which appears to limit restrict plan approval to the dollar amounts contained in the Secretarial funding levels. In an amount, if requested in excess of that level, then a conditional approval (whatever it is) is issued with no clarification as to what happens if insufficient funds to meet tribal needs are appropriated.

Under such circumstances, it is not clear whether the entire plan would then be disapproved, modified, or just held in limbo. Further problems arise in determining just what the Secretarial funding level is when certain benefits packages and other cost savings institutions like FTS and GSA are available to the BIA and or IHS, but not the Tribe. Problems are further compounded at a multi-tribal agency where some difficulty may be encountered in separating costs attributable to services rendered to individual tribes. More fundamentally, without a major revision to the BIA's budget process restrictions of this nature would place tribes once again into a position of designing its programs around an artificially entrenched priority system reflected in the budget. We view the restriction on plan approval contingent to Secretarial funding levels as contradictory to the stated and desirable intent of reflecting tribal needs or priorities within appropriations requests. Rather, if any references to budgetary limitations is essential, we would suggest that the Secretary be instructed clearly to separate tribal needs from agency needs to provide the Tribe with information indicating the total funds available for use by the Tribe rather than tie the language to a vaguely defined Secretarial funding level for a particular program or activity. We further recommend that provisions mandating the Secretary to separate funds appropriated for implementation from those used in BIA & IHS operations.

In summary, S. 2460 appears to have substantial potential to provide a much needed vehicle that tribes may exercise in their attempts to attain self-determination. However, it is clear from our standpoint that many questions and problems remain to be resolved before the Act should be implemented. Most of these issues relate and may in fact be inseparable from fundamental problems within the BIA itself.

In the interests of time and clarity, I will confine my comments to a few very narrow topics concerning fiscal problems we have encountered implementing P. L. 93-638. Many of these problems have plagued the BIA for decades and some have been reemphasized by the recent issuance of several GAO studies relating to Bureau operations. One thing is clear, GAO reports not withstanding, improvements are not likely to occur until everyone begins to accept their fair share of the ownership responsibility for constructively seeking solutions to difficult and enormously complex problems. Everyone, the tribes, the BIA, the Department of Interior, executive offices, and Congress must all share the responsibility of creating efficient and effective delivery of services and resources necessary for Indian tribes to attain self-determination.

With treaty abrogation issues, a spreading backlash against Indian rights, and the ever growing scrutiny of Congress, this is no time for destructive finger pointing accusations, self-protectionists attitudes, shoulder shrugging, buck-passing, minute inspection of past problems or present deficiencies, or

or looking back over one's shoulder--because we just might fall off a cliff. It would serve no constructive purpose whatever to add more fuel to an already volatile situation by joining a witchhunt and launching into a stinging diatribe against the BIA and IHS.

The time has come instead to change our emphasis and direction to seek a positive, carefully-planned impetus for the future. We must stop dwelling upon what has happened in the past and concentrate instead upon how we can become masters of our own destiny. We must develop a working partnership to implement the spirit of self-determination. Only through concerned and dedicated leadership and active involvement of all parties can serious and complex problems be resolved.

I will concentrate upon a single problem to illustrate the intricate web that appears to have been woven about this whole issue of Indian self-determination. All over the nation Indian tribes are facing a very pressing and serious situation resulting from the insufficient availability of administrative support funds for tribal administration of contracts entered into under the authority of P.L. 93-638. Superficially, it appears that the problem was the result of a negligent and deficient fiscal management process within the BIA, heightened by self-protectionist attitudes and incompetent BIA employees. But is this the whole case? We think not. There are indications that lead us to believe otherwise. Let us examine the facts.

The history of the funds available for contract support is very revealing.

(Million Dollars)

	Appropriated	Obligated
FY 1976	$ 10.7	$ 8.8
FY 1977	9.7	12.7
FY 1978	8.7	(?)
FY 1979	10.9	

First of all let us begin by recognizing the roles of the budget cycle and the appropriations process. Like other federal agencies, the BIA must essentially prepare its budgetary request two years in advance. For all intents and purposes, the first year of operation for P.L. 93-638 was FY '76. It was a new process to both the BIA and the tribes. The Bureau should be commended in that it had anticipated sufficient levels of funding for adequate contract support and actually underspent the appropriation authorization by nearly $2 million. But instead of commendation, what resulted? In the second year of operation, FY 77, both the tribes and the BIA were still getting their "act together", but the appropriations committees, apparently in view of the under-expenditure evidenced at the time of appropriation the previous year directed a $1 million reduction in indirect costs. The BIA ended up over-spending by $3 million. Unfortunately, weaknesses within the BIA's own financial reporting system did not provide sufficient back-up to justify any increase in contract support funds and nearly a million dollar cut was directed for FY 78

reducing the total allocation to $8,742,000. To BIA officials, it was obvious that with the developing interest among the tribes that the appropriation was going to be insufficient to cover anticipated outlays. It is our understanding that the reduction was appealed, but denied by the appropriations committees because of inadequate supporting documentation. For FY 79, the BIA requested only $10.94 million for administrative costs, but fortunately the new Assistant Secretary of Indian Affairs interceded and submitted a budget amendment to increase appropriations by an additional $12.8 million. Why wasn't such executive action taken in the past? We conclude that the principle reason was that leadership within Indian Affairs was lacking at the time. There is no Commissioner, no Assistant Secretary of Interior, just a bunch of people who were in an acting capacity without authority or possibly interest.

The situation today for Quinault and other tribes in the Portland Area is this. We have been told that only 35 percent of the approved indirect costs for operation of our programs will be available to us pending some other action such as approval of a supplemental appropriation. With cuts of this magnitude, we face the very real and unhappy prospect of having to stand by and witness the erosion and destruction of all our capacity building efforts that we have developed since the inception of Buy Indian and P.L. 93-638 contracting. We have been forced to reduce administrative services to tribal programs, delay indefinitely improvements to our operations and demand long hours,

weekend duty, and enormous workloads upon our staff with no financial compensation. We have been lucky that the dedication of our staff and their commitment to see self-determination succeed has motivated them to endure these extraordinary personal sacrifices. But these stop-gap measures cannot be sustained much longer; patience is wearing thin and the strain is beginning to demand its price. We now are facing the loss of concerned and competent administrative staff, the loss of some extremely valuable people to the success of our programs, and substantial reduction in the level of services that we can deliver to our people. We have already suffered damage to our reputations and credit standings with vendors and significant reduction in support services to our program operations.

I will not attempt to delve in detail in the effects of the indirect cost short fall, rather I request the Chairman's permission to submit supportive documentation at a later date.

What has been done to relieve the distressing problems which presently threaten to destroy our self-determination efforts? It is our understanding that once Assistant Secretary Gerard became fully aware of the indirect cost problem, he initiated measures to try to correct the anticipated shortfall. One of the things he did was to prepare a $10 million supplemental appropriation request for consideration by the Department of the Interior sometime in December, 1977.

For reasons unknown to us, the request was delayed in the Department for approximately two months before it was referred to OMB for action where it remains to this day. The Appropriations Committees of both the House and Senate are aware of the tribes' sorry plight, but have made the decision not to consider a supplemental request until after the FY 79 budget review process is completed. Tribes would not be able to receive any relief if a supplemental were passed until late August or early September -- by that time the damage will have been done. But even if the Appropriations Committees were willing to consider the extraordinary measure of a special supplemental, it could not do so because OMB is holding up the request. (In fact, OMB is reported to have cut down BIA's supplemental request to $6 million because the fiscal year was already partially expired.

What alternatives are there? Essentially (1) to consider reprogramming of BIA funds. But this would require special approval of Congress and would result in decreased operational levels in certain program areas and further pose threats of jeopardizing future appropriations for important services. Compound the problem by unanticipated costs due to blizzards in the north and floods in the southwest and what have you got left? A perplexing problem that many fail to appreciate. (2) Reprogramming in anticipation of passage of a supplemental would apparently not be legal; and lastly, (3) Let the tribes suffer the full burden of the consequences.

In the meantime, more fuel is being added to an already explosive situation by the release of GAO studies citing what appear to be gross management deficiencies within the BIA and the Senate Select Committee has issued a press release with a headline reading "Indian Affairs Committee to Hear Testimony on Tribal Crises Caused by Improper Administration of the Indian Self-Determination Act". These reports have generated outcries of righteous indignation by tribes and terminationists across the country.

Who is to blame for our present circumstances? The BIA? OMB? The Appropriations Committee? The Senate Select Committee? The Tribes? Interior? History? You decide. No one can be absolved of all responsibility; we cannot lay the blame solely on anyone. But even if we could blame won't solve our problems; some positive, constructive action that will require the mutual understanding and cooperation by all parties must be undertaken before this crisis can be resolved.

From our perspective, it seems to us that the operations of the BIA have in fact contributed to this problem, and we are offering specific recommendations to improve the organizations's fiscal management capacity. We believe that a great deal of the confusion and misunderstanding resulting from the indirect cost problem has resulted from the lack of open and adequate communication and involvement of Indian tribes in the decision-making

structure of the BIA. We frankly have not been told the "whole truth" by BIA officials and have been at the end of the pipeline too long not to recognize when we are not being dealt with openly and honestly.

We have witnessed first hand apparent problems in personnel, financial management, and have felt both the favor and the wrath of Area Directors. We clearly recognize that there are those within the BIA and elsewhere who would like to see self-determination fail. We would be ready to participate in any oversight hearings that may be called to constructively deal with these problems. But further documentation of these problems will not solve our dilemma. Nor will the BIA's flat denial that the allegations of tribes and the GAO are true serve any useful purpose. The point is that for whatever reason the BIA has lost credibility within the Congress, the Executive Offices, the tribes, and even within its own organization. Somehow that credibility must be restored.

We are proposing that the first step in this long and arduous process begin with the establishment of a new working partnership between the tribes and all levels of the BIA. We propose to change the fundamental character of the federal-Indian relationship from paternalism to full participation in self-determination. We would base this relationship upon the founding principles of open communication, willing accommodation, and mutual respect. Tribes must be given the opportunity to participate in the management and operation of the Bureau, including fiscal

management accountability and personnel assignments. No longer should or can the BIA afford to unilaterally make the key decisions which will affect our lives and destiny. Let us work to solve our mutual problems together.

There are undoubtedly many reasons why the BIA may say that sounds good, but it is naive and too impractical. To this we would respond that there are compelling reasons why such an arrangement is necessary. That a concerted effort made in utmost good faith must be put forth to see if this impractical concept cannot be made to work and work well.

The fundamental issue now is whether the sword of self-determination has already mortally wounded the "enemy". We are not seeking lip service to our needs and interests, or endless flowery rhetoric; we ask only for a genuine commitment to form a true partnership. We urge that the Bureau join hand-in-hand with the tribes so that the spirit of self-determination can be served.

Thank you.

Mr. MORISHIMA. Mr. Chairman, my name is Gary Morishima. I am a program manager for the Quinault Tribe that has experienced the problems and the frustrations of trying to deal with Public Law 93–638 ever since its inception.

In the 2 years since Public Law 93–638 has been implemented, the Bureau and the tribes across the Nation have experienced varying degrees of difficulties in dealing with the fundamental changes brought about as a result of this landmark legislation.

My testimony today will not dwell upon the problems of 93–638; but rather we choose to concentrate, instead, upon certain positive things, including S. 2460, which should be considered for implementation to improve the process of self-determination.

I would like to preface my remarks by stating briefly that, in our opinion, Public Law 93–638 and the implementing regulations, are basically sound. But because the concept of self-determination necessarily cuts across organization lines and involves philosophic issues, relating to Federal responsibility, it is our belief that the problems and frustrations that many tribes are presently experiencing with the Self-Determination Act are, in fact, manifestations of deeply rooted problems which have resulted from a long and complex history of more than 200 years of Federal/Indian relations.

We have concluded that these problems are not simply the result of the Self-Determination Act or institutional deficiencies, which may have become entrenched within the Bureau of Indian Affairs.

What the Self-Determination Act has done is just added some additional visibility to some of the problems that already existed, by enabling Indian tribes to become more directly involved in Bureau of Indian Affairs and IHS operations.

The net effect of this participation has, in many instances, resulted in a widening rift of BIA/tribal relationships.

The tribe and the Bureau have now, more than ever, assumed adversary roles; and the Bureau is beginning to lose the support of the people it has been established to serve.

We believe that the time has come in Indian country to stop and really assess what is happening here.

We are not really used to addressing things with a cold imperceptive and calculating eye. We, instead, tend to deal in the realm of intuition and emotion.

For more than 200 years it has been like we have been tied in a black bag and suspended in an atmosphere of politics and social reform. We have been pushed and shoved and pushed and pulled in virtually every direction, but where have we been going?

What is being done to us? What is happening? What are we doing to ourselves?

We are confused, and seemingly powerless to seek outside the void of this bag.

We have, in fact, become puppets. Are we being manipulated to dance at the whim of some grand design to carry out our own genocide under the guise of self-determination? Are we unwittingly playing a role in the classic military strategy of somehow isolating and trying to destroy some common enemy? Are we playing in the hands of people who wish to subvert or repress the moral and legal obligations of the Federal Government to recognize and deal responsibly with our fundamental human rights?

We have no answers—only questions. We cannot help but feel and wonder.

This much, however, is clear. All the laws, regulations and administrative direction in the world will not change the problems we have experienced throughout Indian country in trying to exercise self-determination.

Attitudes cannot be legislated; they cannot be mandated.

We recognize that there are certain dangerous undercurrents in this whole issue that we must acutely be aware of lest we be swept away.

I cannot help but be reminded of a parable of a forester who actually fell off a cliff and desperately clung to a tiny branch for survival.

Lord save me, the forester appealed, and much to the forester's surprise and consternation, a booming voice replied: My son, do you have faith? Oh, yes, the forester responded without hesitation. To which the voice answered: Then let go.

At this time in history, we must carefully assess our strengths and weaknesses and design a workable and positive plan to begin to shape our own destiny. This, we believe, is true self-determination.

We must resist the strong temptation to seek a convenient scapegoat and not succumb to the enthusiasm of a mob mentality and point wagging fingers at anyone, including the Bureau of Indian Affairs.

To be sure, it would be easy to yield to the temptation and point to the Bureau as a self-perpetuating, money-gobbling, inefficient, and monstrous bureaucracy. But what purpose would such action serve? Only further polarization and suspicion could result.

Please don't misunderstand my comments.

To be sure, the Bureau is fraught with many problems—many serious problems—which require corrective action, but we must all recognize that the problems have not been of the Bureau's own making and that dwelling upon the past will not help our future.

The Bureau has, in fact, evolved over 150 years of vacillating Federal policies, from annihilation to assimilation, termination, and now self-determination.

Let us all recognize that the Bureau is more an illegitimate and unwanted child of Federal policies, for which we must all share a joint responsibility.

Before self-determination can become a reality, the fundamental character of the entire Federal/Indian relationship must be transformed. We must have a relationship of advocacy with the Bureau of Indian Affairs.

Self-determination is a double-edged sword, with potential opportunities but also very real dangers of a subtle and insidious nature.

We are here to discuss S. 2460 and Public Law 93-638.

This is not really the proper forum to discuss my personal ideas relative to the fundamental changes within the Indian/Federal relationship, or even the operations of the Bureau of Indian Affairs.

As presently enacted, we concur with the Navajo and Puyallup Tribes, that the Self-Determination Act is not a self-determination at law but is, in fact, a contracting law which enables tribes to operate programs which the Bureau and IHS have formally failed to run to our satisfaction.

It is clear that if these organizations had been providing the necessary services to Indian tribes, there would be no need to consider contracting. There would be no need for legislation of this kind.

As proposed, S. 2460 could provide a valuable addition to expand the options that are available to the tribes in their quest for self-determination by allowing for the consolidation of grants and contracts. We support, basically, this legislation.

There are, however, certain modifications to this legislation that we would like to offer for your consideration.

Rather than dwell to any great detail on the recommendations, I would like to refer to the comments in the written testimony with your permission.

Senator BARTLETT. That is fine.

Mr. MORISHIMA. I believe our principal objection to the legislation at this point in time appears to deal with the fiscal management aspects of S. 2460.

The language of the act presently appears to restrict the so-called comprehensive plan approval to the dollar amounts contained in the secretarial level.

If an amount is requested in excess of that level, then conditional approval, whatever conditional approval may be, is issued with no clarification as to what happens if insufficient funds to meet travel needs are appropriated.

Under such circumstances, it is not very clear whether the entire plan would be disapproved, modified, or just held in limbo.

Further problems arise in determining just what the secretarial funding level is, with certain benefit packages and other cost-savings institutions like FTS and GSA which are available to the BIA or IHS but not to the tribe.

Problems are further compounded, in our instance, with multi-tribal agencies where the western Washington agency, which we are serviced by, supports some 22 tribes.

We have experienced substantial difficulty in trying to separate costs, which are attributable to providing services on our reservation.

More fundamentally, however, is that without a major revision in the Bureau's budget and fiscal management process, restrictions of this nature would continue to place tribes in the position of designing its programs around our artificially entrenched priority systems which are reflected in the Bureau's budget.

We view the restriction on plan approval contingent to secretarial funding levels contradictory to the stated and desirable intent of being able through the plan to reflect tribal needs and priorities within appropriations requests.

Rather, if any reference to budgetary limitations is essential within the language of the act, we would suggest that the Secretary be instructed to provide the tribes with information indicating what total funding level is available for use by the tribe, rather than restricting funding to some vague language defining secretarial funding levels for various programs or activities.

In summary, S. 2460 appears to have substantial potential and provides much-needed help and a vehicle that the tribes may exercise in their attempts to attain self-determination. But it is clear, from

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our standpoint, that many questions and problems still remain with the legislation, as presently drafted, that must be resolved before such an act should be implemented. Most of these issues, in fact, may be inseparable from fundamental problems that we have experienced within the BIA itself.

In the interests of time and clarity, I would like to confine my remaining comments to a few very narrow topics concerning the Bureau's fiscal management problems we have encountered in implementing Public Law 93–638.

Many of these problems have plagued the Bureau for decades, and some have been reemphasized by recent issuance of several GAO studies relating to Bureau operations.

One thing is very clear: GAO reports notwithstanding, improvements are not likely to occur until everyone begins to accept their fair share of the ownership responsibility for constructively seeking solutions to difficult and enormously complex problems.

Everyone—the tribes, the Bureau, the Department of the Interior, the Executive offices, and Congress—must all share in this responsibility of creating an efficient and effective delivery of services and resources necessary for Indian tribes to attain self-determination.

With treaty abrogation issues, a spreading backlash against Indian rights, an ever-growing scrutiny of Congress, this is no time for a destructive finger-pointing accusation, self-protectionist attitudes, shoulder-shrugging, buckpassing, minute inspection of past problems and present deficiencies, or even looking back over everyone's shoulder.

We just might find ourselves walking off a cliff.

It would serve no constructive purpose whatever to add more fuel to an already volatile situation by joining in a witch hunt and launching into a stinging diatribe against the Bureau of Indian Affairs or IHS.

The time has come, instead, to change our frame of reference and our emphasis—to change our direction to think of positive and carefully planned impetus for the future.

We must stop dwelling upon what has happened in the past and concentrate instead upon how we can become masters of our own destiny. We must develop a working partnership to implement the spirit of self-determination. Only through concerned and dedicated leadership, by all parties, and active involvement can serious and complex problems become resolved.

To illustrate, I would like to concentrate upon the intricacies of the indirect cost problem presently facing Indian tribes across the country.

The Quinault, like most other tribes into Public Law 93–638 contracts, are facing some very severe and serious problems, resulting from insufficient levels of contract support funds for tribal administration of these contracts.

Superficially, it appears that that problem was the result of negligent, inefficient fiscal management processes within the BIA, heightened by self-protectionist attitudes and in some cases incompetency entrenched within the Bureau of Indian Affairs.

But is this, in fact, the full case? We think not. There are indications that lead us to believe otherwise. Let us examine the facts. The history of the funds available for contract support is very revealing.

In 1976, the appropriation was for $10.7 million. Only $8.8 million was obligated for contract support.

In 1977, $9.7 million was appropriated for contract support, and $12.7 million was expended in contract support.

In fiscal year 1978, our present year, only $8.7 million was appropriated for contract support.

Let us begin by recognizing the roles of the budget cycle and the appropriations process. Like other Federal agencies, the Bureau must essentially prepare its budgetary requests 2 years in advance.

For all intents and purposes, the first year of operation for the Self-Determination Act was fiscal year 1976. It was a new process to both the Bureau and the tribes at that time.

The Bureau's expenditure for contract support underspent the authorization by nearly $2 million in fiscal year 1976. In the second year of operation, both the tribe and the Bureau were still getting their act together; but the appropriations committees, apparently in view of the underexpenditure evidenced at the time of the appropriation hearings, directed a $1-million reduction in contract support funds for fiscal year 1977. The BIA ended up having to overspend by over $3 million.

Unfortunately, certain weaknesses within the Bureau's own financial reporting system did not provide sufficient backup to justify any increase in contract support funds and nearly a $1 million additional cut was directed for fiscal year 1978.

To Bureau officials, it was obvious that the developing interest among the tribes and the appropriation was going to be insufficient to cover anticipated needs.

It is our understanding that the reduction has, in fact, been appealed by the BIA but was denied by the appropriations committees. For fiscal year 1979, the Bureau requested only $10.9 million in its original budget request.

Through the intercession of Secretary Gerard, that budget amendment was added to that request to increase contract support funds by an additional $12.8 million.

Why wasn't such executive action taken in the past? We conclude that the principal reason was because of leadership problems within the Bureau itself. There was no effective Commissioner, no Assistant Secretary of Interior—a bunch of people only in an acting capacity.

The situation for Quinault and other tribes in the Portland area is this: We have been told that only 35 percent of the improved indirect costs for operation of our programs will be available to us pending some other action, such as approval of a supplemental request.

With cuts of this magnitude, we face some very serious unhappy prospects—of having to stand by and witness the erosion and destruction of all the efforts that we have undertaken in the past 4 years to develop our capacity to begin to manage our own affairs.

Senator BARTLETT. May I just interrupt.

Senator Mark Hatfield will be presiding as chairman, and I would like a note made of that in the record.

Please proceed.

Mr. MORISHIMA. We have been lucky to date in that the dedication of our staff and their commitment to see the process of self-determination suceed has motivated them to endure extraordinary sacrifices.

I will not attempt to delve in detail into all the effects of the indirect cost shortfalls; rather, I request with the chairman's permission to submit supportive documentation at some later date.

What has been done to relieve our distressing problems which threatened to destroy our own self-determination efforts?

It is our understanding that a request was submitted from the Assistant Secretary of Interior's office to the Department of Interior sometime in December of 1977 for a supplemental request to cover anticipated shortfalls.

For reasons which are unknown to us, this request was delayed in the Department for approximately 2 months before it was referred to the Office of Management and Budget where it remains to this day.

The appropriations committees of both the House and the Senate are aware of the tribes' sorry plight. But they have made the decision not to consider the request for a supplemental until after the fiscal year '79 budget process has been completed.

This would mean that the tribes would not be able to expect any relief from the indirect cost shortfall problems until such time late in August or possibly even in early September. By that time, the damage will have been done.

What alternatives are there?

Essentially, (1) to try to reprogram Bureau of Indian Affairs funds. This would require special approval of Congress and decreased operational levels in certain program areas which may pose further threats to jeopardize future appropriations and important services. Programing, in anticipation of the passage of a supplemental, is apparently illegal.

The last of these is the one that we are presently facing. It is to let the tribes suffer the full consequences of the shortfall.

In the meantime, what has been happening? More fuel has been added to an already-explosive situation.

The GAO has released studies, citing what appear to be gross mismanagement problems within the Bureau. The Senate Select Committee on Indian Affairs itself has issued a press release with a headline reading: "Indian Affairs Committee to Hear Testimony on Tribal Crises Caused by Improper Administration of the Bureau of the Indian Self-Determination Act."

These reports have created outcries of righteous indignation by tribes and terminationists throughout the country.

Who is to blame for our present circumstances? Is it the BIA, OMB, the appropriations committees, the Senate Select Committee on Indian Affairs, the tribes, Interior, or is it history? You decide.

No one can be absolved of all the responsibility for this present crisis. We cannot lay the blame on anyone. But blame won't solve our problems. Some positive and constructive action, that will require the mutual understanding and willing cooperation of all parties, must be undertaken before this crisis can be resolved.

From our perspective, the operations of the Bureau have contributed substantially to this problem; and we are offering specific recommendations to improve the organization's fiscal management capacity.

We believe that a great deal of the confusion and misunderstanding resulting from the indirect cost problem has resulted from the lack

of an open and adequate communication system and active involvement of Indian tribes in the decisionmaking structure of the Bureau.

We, very frankly, have not been told the whole truth by Bureau officials and have been at the end of the pipeline too long not to recognize when we are not being dealt with openly and honestly.

We have witnessed, firsthand, apparent problems in personnel, financial management, and have felt both the favor and the wrath of area directors and clearly recognize that there are those within the Bureau, and elsewhere, who would like to see self-determination fail. But these problems will not solve our dilemmas, nor will the Bureau's flat denial that allegations of the tribes and the GAO are true serve any useful purpose.

The point is that for whatever reason the Bureau has lost credibility with the Congress, the Executive offices, the tribes, and even within its own organization, and somehow that credibility must be restored.

We are proposing that the first step in this long and arduous process begin with the establishment of a new working partnership between the tribes and all levels of the Bureau of Indian Affairs.

We propose to change the fundamental character of the Federal/Indian relationship from that of paternalism to full participation in self-determination.

We would base this relationship upon the founding principles of open communication, willing accommodation, and mutual respect.

The tribes must be given the opportunity to participate in the management and operation of the Bureau, including fiscal management accountability and personnel assignments. No longer should, or can, the BIA afford to unilaterally make the key decisions which will affect our lives and our destiny.

Let us begin to solve our mutual problems together.

There are, undoubtedly, many reasons why the Bureau may say that that sounds very good; but it is too naive and too impractical.

To this we would respond: There are compelling reasons why such an arrangement is necessary. That a concerted effort, made in the utmost good faith, must be put forth to see if this impractical concept cannot be made to work and to work well.

The fundamental issue now is whether the sword of self-determination has already mortally wounded the "enemy."

We are not seeking lipservice to our needs and interests or endless flowery rhetoric. We only ask for a genuine commitment to form a true partnership. We urge that the Bureau join hand in hand with the tribes so that the spirit of self-determination can be served.

Thank you very much.

Senator HATFIELD [acting chairman]. Thank you very much for your testimony.

We are much aware on this committee of some of the items to which you have referred and the frustrations we share with you as members of this committee because of our shared hope that this self-determination could become a reality and not just something on paper.

Lest you feel that you are completely isolated from other citizens, let me assure you that as far as the paperwork frustration is concerned, all citizens are complaining about all agencies—not just the BIA.

That doesn't in any way justify the continuation of that kind of delay or frustration or resolving that frustration; but I can assure you

that it is experienced by many citizens dealing with many other agencies as well.

Our Paperwork Commission, which has made about 800 recommendations, which self-destructed after 2 years is now hopeful that we can get some of this jungle of paperwork eliminated—the duplicating, the overlapping, the long delays created by it—if we can get all of our 800 recommendations adopted.

We have had about 200 of them thus far adopted, and we can calculate that it already has been a savings of about $1.5 billion—just in dollar amounts. But we have launched last week a citizen's committee to help pressure the Congress and the Executive agencies of the Government to adopt these recommendations, which I think would go a long way in helping to resolve some of those frustrations.

But I only isolate the one that you have identified this morning—certainly there are many others as well.

I believe at this time that we have some further recommendations to be offered here and presented by Mr. Joseph DeLaCruz.

Mr. DELACRUZ. That concludes our panel recommendations.

Mr. Morishima just gave my statement.

One of the recommendations, I think, in listening to the panel, is that definitely we need to take a look at tribal participation in the Bureau budget process at the area level.

There has to be a strong push that would be a joint tribal/BIA planning effort—like there never has been before because of the dilemma that we are in—by the tribes, the Bureau, and the administration really.

It reflects on all aspects of what is happening in the process of trying to carry out Public Law 93–638.

I am sorry that you didn't get here to hear the first part of the statement that was given on my behalf, because we got into a lot of the other problems.

We didn't go through the recommendations on the bill, because it is quite likely we will be submitting for the record our recommendations on the legislation that we are testifying on today.

Senator HATFIELD. Speaking of the record, we also have some questions that we would like to submit to you as a panel and that you can respond to at the appropriate time to be placed in the record.

Mr. DELACRUZ. Fine.

Senator HATFIELD. Senator Melcher?

Senator MELCHER. Thank you very much, Mr. Chairman.

Are you all convinced that passage of this bill would alleviate some of what non-Indians call redtape and Indians call appropriately whitetape?

Mr. LITTLE OWL. Mr. Chairman, I am Ron Little Owl, the vice chairman.

In reading S. 2460 last night, I think that the Three Affiliated Tribes would support passing the bill.

I also feel that, as it was stated in one of the testimonies here, there should be provisions made known to the Secretary of the Interior on the part of the tribal-level governing body's wish to have a part in implementing.

But that is my own opinion. Maybe the chairwoman here would relate a little more on that.

Also, I would like to have made known to the committee here—the chairman and the committee—that we have submitted a copy of our written testimony here. We have submitted a number of our proposals in applying for 93–638 and phasing our tribal government on into the indirect cost to the committee.

They have copies of each one of these papers that I have in front of me, Mr. Chairman.

Maybe the chairwoman would like to say something about that.

Ms. CROW FLIES HIGH. I just would like to say thank you to the committee for giving me the chance to come here and testify before you.

I would sooner have the other representatives here carry on.

Thank you very much.

Senator MELCHER. Thank you.

Ted, do you have anything to add?

Mr. RISINGSUN. I would like to add two statements here. They are members of the Northern Cheyenne Tribal Council, Mr. George Hiwalker, Jr. and Mr. Raymond Spang. They are members of the Northern Cheyenne Executive Committee.

They address themselves to some proposals on what we are talking about here.

I would also like to add as an appendix to the Northern Cheyenne testimony a letter from Dr. Khan, superintendent of Busby School, that will help to clarify some of the statements that were made this morning.

[The material referred to follows:]

My name is George Hiwalker, Jr.

As an appointed delegate, enrolled member, and duly elected Tribal Council official of the Northern Cheyenne Indian Tribe of the Northern Cheyenne Indian Reservation, I would like to submit, on behalf of the Northern Cheyenne Tribal President, Vice President, and Tribal Council, the following testimony for internal reorganization of the United States Department of the Interior, Bureau of Indian Affairs.

The context of this testimony on behalf of the Northern Cheyenne Tribe is neither new nor extraordinary, merely revised and modified from one congress to the next congress, from one Administration of Indian Affairs to the next Administration of Indian Affairs, from one Secretary of the Interior to the next Secretary of the Interior.

I shall therefore entitle this testimoney the Northern Cheyenne Replacement and Displacement Theory, Modification number three, or more appropriately, third congress, third Indian Affairs Administration, third Secretary of the Interior, requesting Bureau reorganization.

In 1973, a unanimous Tribal Council action to invalidate grossly illegal leases and permits for coal exploration and mining on the Northern Cheyenne Reservation, fortunately or unfortunately exposed tribal leaders to the most critical flaw within the Bureau structure, accountability for so-called trust-related actions. This lack of administrative

accountability clearly exposed the Bureau's inabilities to discern the legal obligations of trust responsibility to an Indian Tribe from programatic services rendered which too frequently abuse tribal "jurisdictional rights" as a sovereign. Trust responsibility to the Northern Cheyenne Tribe as a non-treaty tribe is not a service-oriented program, it is a legal and legislative obligation to preserve, protect, and guard its land, resources and members from other parties who would dispose of its jurisdictional ownership and entitlement rights.

I quote

"The concept is obviously one of full fiduciary responsibility, not solely of traditional market-place morals. When the federal government undertakes an 'obligation of trust' toward an Indian tribe or group, as it has in the Intercourse Act, the obligation is 'of the highest responsibility and trust', not that of 'a mere contracting party' or a better-business bureau. 173 Ct. Cl at 925.

Furthermore, the standard of care employed by the trustee in the management of the beneficiary's land and resources will be measured by the standard employed by the trustee in management of its own lands and resources. It is elementary that the standard or measure of care, deligence, and skill required of a trustee in the administration of a trust is that of an ordinary prudent man in the conduct of his own private affairs under similar circumstances, and with a similar object in view. Restatement of Trusts, §176; 54 Am. Jur., Trusts, §322; Scott

on Trusts (2d Ed.), §174. The obligation of the United States to an Indian tribe whose lands are held in trust is greater than that towards its own citizens. Oneida Tribe vs U.S., 165 Ct. Cl. 487 (1964)."

Obviously, if no administrative accountability exists within the "Indian Affairs" bureaucracy structure of government, and it "trustee obligations" continue to be characterized as "welfare programs" by those persons eternally employed within that "Indian Affairs" bureaucracy, "internal reorganization" is as destructive as a national "water policy" which deceptively advocates national control over all Indian-owned water resources.

The Northern Cheynne Tribe therefore proposes two options for "internal Bureau Reorganization" contingent upon the establishment of Indian Affairs (civil) Review Boards which would, annually monitor all legal and legislative trust obligations, as assigned to all Indian Affairs personnel, other than political appointees. The individual participants comprising such proposed Indian Affairs (civil) Review Boards would include the Secretary of Interior, Assistant Secretary of Interior, Indian Affairs, Deputies of Indian Affairs, and Tribal leaders within common geographic and/or resource areas. These indivudual board participants would be directly responsible for consistant and continued evaluation of Bureau "trust obligation" actions and all personnel assigned to carry out those actions. They would be delegated the authorities to monitor, advocate and lobby for legislative and judicial actions which would protect, guard and expand Indian lands,

resources and jurisdictional rights and remove those personnel, other than political appointees within the federal "Indian Affairs" structure, who fail to carry out "trust obligations".

The "political appointees" assigned to Indian Affairs with the Interior Department, and "Review Board" participants will thereby be held accountable to Congress for expressing, advising, and advocating the true desires and needs of Indian Tribes and obligations of the United States Government as trustee of these tribes.

The first proposed option contingent upon the affectuation of Regional and/or Area Indian Affairs Civil Review Boards is to abolish the Bureau of Indian Affairs Area offices and contract the field agencies, contingent upon assessment of functions, redesign of functions and implementation of the redesign through tribal control. Such a contracting action will most probably require increased authority, staff and funding at the agency level, as well as, research funding at the tribal level for the redesign and contracting action. The second proposed option, also, includes the assessment, redesign of functions and contracting of the Bureau Field agency coupled with the abolishment of the area offices. The only variance from the first "reorganization option" is that technical legal and resource centers would be established in capatible geographic regions which are substantially concentrated with Indian tribes of common natural resource and land identities.

These technical (Trust Responsibility) centers would address themselves to legal, land and resource issues which consistly thwart Indian tribes from exercising total jurisdiction and control over their respective lands and resources. Such centers would be entrusted with the responsibilities of defining, advocating and lobbying for regulatory and/or legislative actions which ensure tribal jurisdiction, and control of land and resources and assist tribes in the implementation and design of jurisdictional authorities which supercede the regualtions of other federal agencies which are virtually ignorant to the realities of tribal jurisdictions. In other words such techincal centers in conjunction with the surrounding Indian tribes could potentially establish fundamental and appropriate regulatory policies for dealing with Indian sovereigns. It is imperative that, 1) the personnel housed within these proposed technical "Trust Responsibility" centers be highly competent professionals, such as, attorneys, geologist, hydrologist, land use specialists or the like: and 2) that these technical centers be literal "think" tanks removed from any political arenas of the bureaucracy.

I would now like to introduce the Northern Cheyenne Tribal Comptroller, Mr. Edward Kennedy, who will address the need for financial and budgeting reorganization within the Bureau:

Ed

The Northern Cheyenne Tribe find that in contracting, the following items continously repeat themselves:

1. The budget process is archaic

The Base Line data used in developing the Bureau Budget does not respond to the Tribal needs as expressed by Tribal Governments. The Base Line data most times, is based on obsolete OMB cost information which is not applicable because of rapid inflation. Secondly, the data is geared to minimum service rendition and not to real tribal need and thirdly, budget negotiators for the Bureau use Bureau Budget line items as items for "political bartering" on the "Hill".

2. The Bureau budget is impossible to decipher

The budget once established, is hidden from the tribe or is doled out piecemeal so as to circumvent tribal knowledge of the many resources available to conduct a service or function. This leads me to say that the BIA requires, no demands, that we submit report after report, yet who demands an accounting of the BIA, their computer system in Albuquerque is the laughing stock of "Indian Country". Bureau employees when asked for accounting information always respond with "we don't know", now, gentlemen, the Bureau says to the tribe, lets "Capacity build" tribal management capabilities, the Northern Cheyenne say lets "Capacity Build" the Bureau of Indian Affairs.

3. The Bureau budget is non-functional as a management tool.

In any common "Mom and Pop" business venture the

principals always know what cpaital resources are available. Here, we have a billion 247 million dollar Bureau budget and no one is cognizant of total bureau resources or the application thereof. Should the Bureau be desirous of continuing to do business with the Northern Cheyenne Tribe we demand, for a change, that the Bureau become responsible and accountable for the total resources available in the name of the Northern Cheyenne Tribe.

4. Bureau accountability

The fourth area is Accountability itself. When the tribe contracts a program, "under whatever title", this is a tacit admission of failure of trust responsibility on the part of the Bureau of Indian Affairs, this TACIT admission of failure created PL 93-638.

The Northern Cheyenne Tribe contracts many and varied functions and feels that this demonstrates the lack of responsibility and accountability by the Bureau of Indian Affairs. We recommend that Bureau employees be removed from Civil Service Commission status and that these same employees be all issued yearly performance contracts with the Review Board proposed by Mr. Hiwalker monitoring these same performance contracts.

Had the Bureau employees (trust officers) done their jobs properly many of the problems facing the Northern Cheyenne Tribe would never have happened.

In conclusion, the Northern Cheyenne Tribe will continue to exercise its full sovereign and jurisdictional entitlements

as a non-treaty Indian Tribe. It will continue to demand total administrative and budgetary accountability from its direct trustees both legislatively and judicially. More importantly, the Northern Cheyenne Tribe will continue as "human beings" long after the Bureau of Indian Affairs has terminated itself.

The Northern Cheyenne Tribe contracted with the Bureau of Indian Affairs to operate and Indian Action Program in July, 1975.

The Indian Action Program is a model of the concepts of 93-638. It allowed the Tribe to make its own decisions; It allowed for Tribal self determiniation in terms of needs and directions. One of the needs met was that a quality education to help the Northern Cheyenne People achieve social and economic well being. Under continued funding we will be able to up grade educational and vocational levels and reduce under-employment and unemployment on the Northern Cheyenne Reservation. The Tribe has made good use of the funds by developing the post-secondary educational system we now have (Dull Knife Memorial College).

To maintain the present operations and future program development on the Northern Cheyenne Reservation we feel it is absolutely essential that the Indian Technical Assistance Center in Denver, Colorado remain a permanent organizational structure of the Bureau of Indian Affairs. In order to do the task assigned to them the Indian Technical Assistance Center must have the authority to institute necessary administrative changes with Central Office approval and support. There must be a well qualified administator chosen to head the office. We would strongly urge the Cental Office to again offer, Mr. Bob Livingston (one of the original designers of the Indian Action Program and an excellent administrator,)

the position of Chief of Indian Technical Assistance Center. In order to make the office a viable functioning office of the Bureau of Indian Affairs, it will also be essential that this office receive full support from the Central Office.

Again, we would strongly recommend that the Indian Technical Assistance Office be maintained and upgraded. With Central Office support it can provide the on-site contract support and technical assistance necessary to strengthen Tribal Indian Action Programs. It would be impractical to design another delivery system for Indian Action Programs, when all we need to do is to refine and strenghthen the present system. The added cost of changing systems could be better spent by increasing the grants to various Indian Action Programs.

Presented by

Raymond Spang, Chairman
NORTHERN CHEYENNE INDIAN ACTION PROGRAM, INC.
Box 206
Lame Deer, MT 59043

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Busby School
of the Northern Cheyenne Tribe

Telephone (406) 592-3648
Busby, Montana 59016

March 10, 1978

Mr. Allen Rowland, Chairman
Northern Cheyenne Tribal Council
Lame Deer,Montana 59043

Dear Mr. Rowland:

This letter is intended to acquaint you with the problems Busby School of the Northern Cheyenne Tribe has been facing in the last few months.

Since our school is located on federal trust land and our school enrollment is almost all Native American, the total funding for the school and the dorms etc. comes from federal sources. The officials require that we go through Billings Area Office(BIA) for everything and anything. The procedure is so lengthy and tedious most of the times that the funding and the facilities provided for by the funding lose their weight— it takes so much time that the jobs are only half done because the rise in the cost of materials and labor make the amount inadequate. A good example is the renovation of our dorms. We were allocated $98,500.00 for the purpose. The funds had to be funnelled through the Area Office. We had to wait for a long time to get a letter to the effect and then we had to rush through working out the details. It was our hope that the funds would be made available during Spring, 1977 and the renovation would be completed before the re-opening of the school in Fall, 1977. We are housing our children in half of each dorm and the half under renovation will take a few more weeks. Our children suffered throughout this school year. Several other things were pointed out by the Area office and portions of the allocated amount were sliced away for various reasons. In August, 1977 we were informed by Senator Melcher's office about a special funding for Busby School in the amount of $200,000.00 for the renovation of our Elementary and Secondary School buildings. We were supposed to get a letter from the Area Office and the money was to be made available to us soon after October 1, 1977. We did not receive any written note to the effect until after the end of the year,1977 inspite of our repeated requests. Every time we were told "we are working at it".

The authorities from B.E.H. in Washington D.C. told us that some funding was made available to Area Offices to help all Indian schools in "Child-Find" and starting and/or improving Special Education Programs. We have not heard any thing about it yet. All we know is that B.E.H. and B.I.A. have to agree on the funding procedures before the money can be made available. We had submitted a proposal for Education of Indian Handicapped Children in our school. We heard that we would be getting about $47,000.00 to start our program. Somehow, within the procedural formalities of the B.E.H. and B.I.A.the school year is almost over and our program could not get off the launch pad. Consequently, the children

remain unserved. We requested funds from Title IV C ESEA ($15,000.00) to do our child-find. The specialists of education in Area Office did not consider our request. The money was awarded to another school in Wyoming although they had received the same grant for the same purpose last year, We cannot help get the feeling of step-motherly treatment from our Area Office specialists most of the time.

Title I ESEA funds are also made available to us through the Area Office. In 1976 the Area Office specialist fussed about some figures in our Title I proposal. They were changed several times and finally approved with little variation from the very first ones. The proposal was delayed and approved on September 20, 1976. The school reopened on August 16, 1976. To our understanding the intent of the Congress in creating, enacting, and continuing funding of Title I ESEA was to help the needy children in their learning program during the entire school year. We were later forced to return the amount of money spent on the salaries etc. of Title I personnal during the period of August 16-September 20, 1976 because our program was not approved before the start of the school. No consideration was given to the fact that the proposal was submitted long before that. The school had to cut down the Title I program and returned the required amount of money in question($6,650.00) from Title I funds. This was accepted by the Contracting Officer and by the Chief of the Division of Education but latar on, the Assistant to the Chief of the Division of Education ruled it out and forced the school to pay to them another sum of $6,650.00 from the General Fund. Title I ESEA was, however, signed as valid funding as part of total school contract by Mr. Babby. It was ruled illegal by the Assistant Chief of the Division of Education in the Area office. The earlier payment from Title I funds was also kept by them any way. The left over monies in Title I are taken away each year and the school cannot carry them over to next year.

Another interesting regulation in Title I ESEA is that the last date for filing request for modification of the proposal is December 15,each year. The last day for ordering supplies, materials etc. is also December 15. It is not allowed to order anything before the approval of the modification which takes at least a month or more. The result is that even if the modification is approved, no supplies etc. can be ordered and that money has to be returned to Area Office. Evidently, this ruling is contrary to the intent of the law and does not serve the children at all.

In October, 1977 our budget and Contract(Band Analysis) was signed. A week after that we were told that the Area Office would not pay for the milk consumed by our children. We were supposed to pay for it from our general budget and food allocation. For five years prior to this the Area Office paid the milk bills but this year they discovered that it was an error--pointed out to us after signing the total school contract. We did not include milk money in our food budget for obvious reasons. We protested and in December, 1977 the Contracting Officer promised to bail us out for the milk bills($30,000.00) but declined to put it in writing and in February,1978 (after our return from Washington, D.C.) he backed out of the promise. It is not important to them to consider the nutrition needs of Northern Cheyenne children.

The B.I.A. Area Office contracted with the School Board and their own employees for I.P.A. program. The School Board agreed to go along. That created a deficit

of $60,000.00 each year in school budget, which was taken care of by Area Office for the last two years. After signing the Band Analysis Contract this year they are dictating us to pay for this from the General Fund which is already in the red. They are also telling us to cut down the term of service of the I.P.A. employees from 12 to 9 months each year, something they cannot do to civil service personnal themselves. For reasons of low performance by Plant Management crew, the school is paying for four employees who should be the responsibility of the BIA. One person is retired through R.I.F. action which was uncalled for if the services were not going to be contracted. The School Board has no funds to keep the man on job and the Plant Management offices in Lame Deer and Billings don't think the funds can be transferred to school.

We are hurting for money and services to our children in every area. We need to improve education and curriculum in Busby School and they cannot support us. We need additional housing for our certified personnel who come to serve our children from far-off places but they can't help us . We need additional monies to finish the renovation of our dorms but it is a very far-fetched hope. We need building facilities for our physical education programs and a gym. for sports etc. activities. It does not appear to be a legitimate need to them. We need to enhance the achievement level of our children but it cannot be done without additional funds. We need these fundings to satisfy the needs of educational, physical and professional growth of our children. Instead, we are constantly forced to cut down our budget to fit the frame that is provided us by the Area Office.

The situation gets more and more frustrating if you look at it carefully. As the Chairman of the Northern Cheyenne Tribe I want to request you to find a way to convey the pathetic state of affairs to the U.S.Congress who are trying to help our Cheyenne children but whose sincere intentions and efforts get clouded by the bureaucratic procedures of the Bureau of Indian Affairs and their crew that is responsible to deliver the "trust responsibilities" of the Indian children.

Sincerely,

Asad Ali Khan

Dr. Asad Ali Khan
Superintendent

P.S. The Area Office also stopped paying for the travel of off-reservation dorm students. No letter has been received but the payment was stopped through a telephone message. These students have to go home on major holidays. This puts the school into another of at least $7,000.00 each year. This account has always been the responsibility of the Area Office throughout the history of this school (about 50 years or more).

Mr. MORISHIMA. Senator Melcher, I would like to respond to your question.

First of all, we believe that the consolidation authority that is contained within the body of the proposed act has a good potential to eliminate a great deal of the administrative costs and to help alleviate certain problems of piecemeal funding of major project efforts.

However, just like the basic law itself—93–638—our principal problems appear to come from vagueness involved in how such a program might be administered.

On Quinault, we have attempted to consolidate some of our programs under block grant authority and under other contracting authority within the BIA.

Our law enforcement contract, for instance, consists of the consolidation of five former separate contracts that were administered individually.

We now have one master contract; but the strange part about it is that we are still forced to maintain separate funds and separate checking accounts and separate accounting records.

We are forced to do this, apparently, because of the separation of funds from each of five funding sources within the Bureau's budget process. We hope that such legislation would clarify the consolidation. That does not mean that the tribes will be left to share the entire burden of the administrative responsibility, while relieving some of that burden from the BIA's shoulders.

Senator MELCHER. I guess the point of my question is: Is the bill, as drafted, specific enough to alleviate a lot of this bureaucratic restriction and mumbo jumbo that gets you involved in just what you were describing.

Did you say five separate accounts?

Mr. MORISHIMA. Yes.

Senator MELCHER. Five separate accounts for one program.

Mr. MORISHIMA. Yes.

Mr. KENNEDY. We feel that it is vague as it is drafted right now in certain areas.

We are preparing written suggested changes to specific portions of the draft bill. We will be submitting that to the committee for your observation.

Senator MELCHER. I think that would be very helpful.

Mr. KENNEDY. We feel, especially in the planning portion of the comprehensive plan portion of the granting mechanism, that we will be addressing that.

But with regard to your original question, we feel that perhaps the increased participation would come about. But, more importantly, it would provide us with more planning stability and just one more option in the contracting mechanism.

We feel it is a helpful step in the right direction, and we will submit some testimony that we feel will clean it up.

Senator MELCHER. I think that would be very helpful.

Thank you very much.

Senator HATFIELD. I would like to just make a comment.

I find it increasingly frustrating to find that even where legislative intent is clearly spelled out, that either it is circumvented or frustrated frequently by bureaucratic design or inaction—whatever it may be called.

We have a growing number of examples where Congress has passed a bill. I think we have, in the case of Indian affairs, clearly established congressional intent which is not in any way recognized by the time it is actually implemented.

I think it is probably one of those occasions where we might contemplate—and I shall talk to the Chairman about it—even though it is early in the so-called legislative history, to call in the BIA and have some oversight hearings to see exactly what their record is as far as carrying out legislative intent or if there needs to be clarification of legislation that was assigned to them to carry out. And if they are not perhaps clear as to what our intent was.

We have a very recent example of this in the oral bidding law which was passed by the Congress only a few months ago and still has not been implemented. Now we find that there is a review going on within the review.

It becomes almost apparent—not quite—that they do not like the law that we passed and, therefore, they are not going to enforce it, or they do not want to enforce it.

So we get into that kind of a situation.

I wouldn't want to raise your expectations that even if we put together a clearly defined act here and passed it and got the signature of the President, that doesn't end the problem. Many times we have to follow through with legislative oversight.

Maybe this is the time to do that with the bills we already have passed, and let them know we are serious.

I would like to recognize that we have today in our hearing room four of the area directors:

Harley Zephier, Aberdeen, S. Dak.; James Canan, Billings, Mont.; Vincent Little, Portland, Oreg.; and Clarence Antioquia, Juneau, Alaska.

We will have questions that we would like to submit to the area directors.

They did not come with written statements or testimony, but rather were invited here and made themselves available for resource purposes today.

So we are grateful for their presence, and we have some questions we would like to ask them to respond to for the record.

Senator HATFIELD. There being no other questions, this committee will, therefore, stand in recess.

Thank you all for being here this morning and for your contribution.

[Whereupon, at 11 a.m., the hearing recessed.]

[Subsequent to the hearing the following material was received:]

Testimony of Mr. Jonathan L. "Ed" Taylor March 13, 1978

I wish to express my appreciation for this opportunity to submit my personal and professional views of the proposed amendment to P.L. 93-638, the Indian Self-Determination and Education Assistance Act.

First, I wish to reiterate that the Eastern Band of Cherokee Indians remains basically opposed to the existence of this Act, however, we do not wish to stand in the way of or to interfere in any way with the individual rights of a tribe or a group of tribes, to pursue their goals and efforts for their people within the intent and purpose of the Act. Therefore, my testimony is being offered in that spirit.

I recall the days when this bill was being proposed as the long awaited solution to problems created by the decades of paternalism and bureaucracy that the Federal Government inflicted upon the American Indian people. This bill proposed radical changes in the manner in which the Bureau of Indian Affairs and the Indian Health Service were to administer their programs. I personally was overjoyed at the prospect of change that was so promising at that time. In the three or four years that have passed since then, I and thousands of other American Indians are still waiting for those changes to occur. Although there has been significant increases in the practice of contracting between the Federal Government and Indian Tribes, I still detect a gross lack of understanding and sensitivity on the part of Federal employees regarding the recognition of Tribes' sovereign treaty rights and implied powers contained within the Constitution of the United States, which confirmed the existence of Indian Nations as separate governmental entities. Instead, there is a continuing interpretation of the role of the Federal Government as <u>benefactor</u> and a continuing perception of the American Indian as <u>beneficiary</u> much in the same vein as welfare recipients of government provided services. Mr Senator, this is WRONG.

If an amendment to P.L. 93-638 can change this attitude, then I am for any such amendment. If this amendment can transfer control over the budget and the

planning process from the Government to Tribes and eliminate the frustrating and unnecessary delays in processing contracts and reimbursement documents, I say "pass it!" If this amendment would expedite the transition from total Federal control and domination of American Indian life and it would substantially restore the lost dignity, pride and self-sufficiency once enjoyed by the Tribal groups, then I am for it.

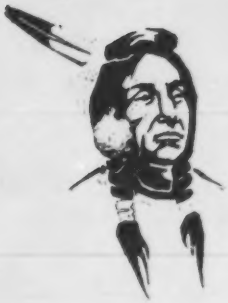
Mr. Senator, I stand for any type of change or effort that would increase, or create an equal opportunity for American Indians. Even though the Civil Rights laws have long been in effect, I still observe and witness incidents where American Indians living on or near reservations are still victims of discrimination. If this amendment can help to overcome this discrimination, whether it is blatant or subtle in intent, then I call for every American Indian to support it and testify to that effect.

Today, we are speaking of something that is much greater -- which has the potential of producing great impact upon the social, educational and political structures of American Indian Tribes. In my opinion, we are not discussing procedural changes -- we are talking about a way of life! Never before, during modern times, has the potential for institutional change been before us as it is now. This amendment as I see it offers hope -- a hope similar to that which many Americans had for Jimmy Carters' Administration. Every day I read or hear of the disenchantment that many Americans suffer with this Administration. Unfortunately, what present day disappointment and fears they may have, American Indians have suffered far greater under every U.S. President in history.

Now that Congress has spoken in the form of P.L. 93-638, let them speak again now that our very existence as a unique and separate form of government is being challenged in the courts and in the halls of Congress. I was asked personally to offer my views concerning this amendment to P.L. 93-638. I call for the passage of this amendment, which would permit comprehensive plans to be prepared and submitted by American Indian Tribal Governments, which would direct the Secretaries

of Interior and the Department of Health, Education and Welfare to execute block grant funding in response to these comprehensive Tribal plans. I understand that these actions would not lessen or weaken the time tested and legally upheld trust obligation and responsibility of the Federal Government in behalf of qualified Indian Tribes, therefore, I am calling upon the Congress in its wisdom to reaffirm the rights of Tribal Government to determine their own destiny and life course. I am also calling upon Congress to reaffirm and strengthen the government to government relationship that has evolved from the Constitution of the United States.

Thank you Mr. Senator for hearing my comments and I do want to set the record straight that Jonathan L. Taylor does <u>not</u> waffle on the issues as you suggested in the last hearing on P.L. 93-638, held in Albuquerque, New Mexico.



Colville Confederated Tribes
P. O. Box 150 - Nespelem, Wash. 99155 (509) 634-4591

STATEMENT

OF

MEL C. TONASKET
CHAIRMAN
COLVILLE BUSINESS COUNCIL

BEFORE

THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ON

S. 2460 - TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

ON

MARCH 16, 1978

Mr. Chairman, and members of this Committee, I am pleased to appear before you today to offer the views of the Colville Tribe on S. 2460, a bill to amend the Indian Self-Determination and Education Assistance Act, commonly referred to as Public Law 638.

My tribe generally supports the concepts of S. 2460, that of making it easier for tribal governments or tribal organizations to contract for services, programs, functions, projects, or activities for the benefit of Indian people.

However, we do have some concerns with some provisions in the bill which we would like to direct our comments to.

All tribes generally agree, I think, that the contract application and contract modification process is quite lengthy and complicated--perhaps deliberately and needlessly so. I personally don't feel that the time-frame called for in the bill for Secretarial review, determination, and the appeal process contributes much in the way of substantive improvement on this situation.

If the Secretary were to take the full allotted time in which to review a tribe's application and make a final determination or grant an appeal hearing, a half year could conceivably lapse before a tribe knows whether or not it can contract a bureau program or function. I hope your committee or staff will give some consideration to amending the bill to bring it more in line with the reality of the needs and goals of tribes. I appreciate the efforts that have already been put into the drafting of this legislation, but down on the level where we live and where the impact is greatest, we don't feel this time span is a workable one for good management control.

The same could be said for the span of controls in implementing the provisions of 638. Your bill calls for some rather comprehensive, long-range planning by tribes. We are in agreement with that intent. Goals must be set flowing upward from lower operating levels. We realize the constraints imposed upon upper management by the guidelines of the legislation, but how many tribes have this long-range planning capability? For that matter, where does that capability exist within the Bureau itself? The present 3-tiered level of bureau operations is more suitably geared to serve a single, common need, client base. Indian people have differing needs which require a variety not only in the services but also in the manner in which those services are delivered.

And since that's the case, the decision-making must be moved closer to the tribal level where more effective leadership can be provided, where communication is effective, and where bureau responsiveness is not excessively long. I submit to you that if tribes had really had a more active role in drafting the regulations we wouldn't need the present amendments. Now, we have a need to upgrade the quality and quantity of the agency staff to meet the contracting needs of the tribe. The agency people have to deal with the the tribal people on a day-to-day basis - a relationship that isn't possible with the Area Office or Central Office staff. The people at the local level are aware of what our needs are, and if they're sincere at all in helping to facilitate the contracting process, I'm sure it must be a source of frustration for them to realize that their efforts can be negated by the mere beck and whim of some bureaucrat in an office far removed from the reservations, and by extension, from reality.

If the present activity and conduct engaged in by the BIA in the 1978 version of BIA Reorganization is any indication of the support tribes can expect from our so-called trustees, I'm sure you can well appreciate why we feel it's an absolute necessity to move more contract authority and

people with contracting skills down to the agency level. Or, in the alternative, let that be a matter of local option for those tribes whose sole resource is the Area Office.

My final comments are directed to the formula grant process based on population. Eighty-two point nine per cent (82.9%) of the Indian tribes in the United States have populations of less than 1,000 members. Small tribes are adversely affected when allocations are determined on the basis of population--the sums are so small in comparison to the needs as to be almost meaningless. This phenomenon is nowhere more apparent in the money allocated to support and strengthen tribal governments under section 104 of 93-638. This reflects a policy determination of OMB requiring Federal program funding on a formula basis using 1970 Census data. Many tribes complain that the 1970 census data is inaccurate.

Serious objections to this criteria have been raised by tribes because of the discrepancy between eligible population under 638 and the service population recognized by other Bureau programs.

The definition required by OMB is as follows: (1) for tribes eligible for general revenue sharing, the latest revenue sharing figures; (2) for tribes not eligible for general revenue sharing, an equivalent population is used (whatever that means); (3) for Oklahoma, the census figure for Indians belonging to that particular tribe in the former reservation area--if it is larger than the revenue sharing population. The population figures for revenue sharing fund distribution are based on the number of persons under the jurisdiction of the government and receiving substantial governmental services. For Indian tribes, the figures are U.S. Census estimates of (1) all resident Indians within the reservation boundaries whether living on trust land or not; and (2) Indian residing on trust lands pertaining to the tribe and adjacent to the reservation. OMB assumes that those Indians living on trust land adjacent to the reservation were receiving services

from some governmental unit if not from the tribe. This is not always the case. I think that these are problems that should be looked into under this legislation.

With that, Mr. Chairmnan, I conclude my testimony, and again, I thank you for the opportunity to appear here today.

Phil

Executive Office of Choctaw Nation
Drawer 1201
Durant, Oklahoma 74701
924-8280

RECEIVED
MAR 22 1978
EMERY D. SPEARS
EXECUTIVE DIRECTOR

March 16, 1978

Honorable James Abourezk
Chairman Senate Committee
Washington, D.C. 20510

Dear Senator Abourezk:

I received your letter with the enclosure of Senate Bill 2460, concerning the P.L. 93-638 amendment. After reviewing the amendment in the Bill, I have the following comments to make:

The Choctaw Nation of Oklahoma remains neutral at this time as to whether they should favor or disfavor this Bill.

It has been the experience of the Choctaw Nation of Oklahoma to attempt to contract Bureau originating programs and finding discouragement when notified that support funds for the Administration of the programs by the Tribe were not available.

It appeared that by using the methods outlined in Senate Bill 2460, would allow the Indian Tribe greater latitude in its contractual efforts.

The Choctaw Nation would request that rather than receiving a deadline for the Tribe to have submitted its proposal. But, rather this be left at the discretion of each individual Tribe. I know in our particular case, it seems that in the beginning the Bureau was attempting to force Indian Tribes into a position contracting rather than allowing them at their own discretion. In later months, in more recent time, it appears that this is not the case, however, the Indian Tribe does feel pressure from the Bureau as to whether or not they will contract.

Thank you very much for sending a copy of the Senate Bill 2460 to our office. I hope the comments that I have made will help you and your staff in their decision making process.

Sincerely yours,

Emery D. Spears

Emery D. Spears
Executive Director

EDS:eqn

CENTRAL COUNCIL
tlingit and haida indians of alaska
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(907) 586-1432 or 586-3613

MAR 27 1978

March 16, 1978

Honorable James Abourczk, Chairman
Senate Select Committee on Indian Affairs
3121 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator:

Please accept this letter as our written testimony, for the record, endorsing S.2460, a bill to amend the Indian Self-Determination and Education Assistance Act of 1975.

The Central Council is particularly gratified by this amendment in that it reaffirms, to the Bureau of Indian Affairs and the Indian Health Service, the clear intent of Congress and the desire of all people in Indian country that federal domination in services to Indian people is no longer desireable nor conducive to the self-determination of Indian tribes.

It is our sincere hope that the expression of S.2460 will leave the concerned federal agencies with no other conclusion to square than that Indian Affairs shall be governed by Indian government. Your consideration and effort in this matter has been greatly appreciated.

Sincerely yours,

CENTRAL COUNCIL OF THE TLINGIT
AND HAIDA INDIANS OF ALASKA

Raymond E. Paddock, Jr.
President

cc: Honorable Ted Stevens
Honorable Mike Graval
Honorable Don Young

Miccosukee Tribe of Indians
of Florida

P O BOX 440021, TAMIAMI STA., MIAMI, FLORIDA 33144
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SECRETARY

JASPER NELSON
TREASURER

HENRY BERT
LAWMAKER

March 23, 1978

Senator James Abourezk
Chairman, Senate Committee on Indian Affairs
United States Senate
Washington, D.C.

Dear Senator Abourezk:

Thank you for personally soliciting my views about S.2460. Thank you particularly for your continued concern for rationality and fairness in the continuing development on national policy regarding Indians.

In general, we agree completely with the bill's obvious intent. In an attempt to provide constructive criticism, however, we should like you to consider the following changes.

In the preamble (page 3, lines 4-6) for the words "a consolidated simple grant authority which follows a comprehensive tribal plan," perhaps change the language to read: "consolidation of funds in contracts containing scopes of work relating to more than one appropriations category."

Then under Title III, reference should be made not to "simple consolidated grants" but to "the consolidation of funds in a contract from more than one appropriations."

Explicit statements, moreover, should be made to the effect that this law supercedes appropriations legislation. Otherwise, the agencies could come back (as they are now, especially in IHS) with the contention that in spite of 638, the appropriations law supercedes.

Finally, the provision (in section 301 (b)), that the Secretary of Interior should be authorized to make even IHS Interior contracts and grants does make sense, but may be too radical for IHS to leave alone. Through their people, they may be able to shoot the whole set of amendments down on this score alone.

On this matter, it may be better to have the amendment designate someone within DHEW at a lower level than the Secretary to enter into the actual contracts with Indian Tribes. The way it works now is that Dr. Emery Johnson's office seems ready to agree to certain provisions but the actual contracting has to be approved by someone else in DHEW who is not as familiar with Indians as IHS. Perhaps Dr. Johnson's office could be charged with the actual contracting in the amendment.

Again, thank you for considering my views.

Sincerely,

Buffalo Tiger

Buffalo Tiger
Tribal Chairman

MAR 31 1978

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 406 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 — 343-9484

March 28, 1978

Senator James Abouresk
Senate Select Committee on Indian Affiairs
Dirksen Office Building
Washington, D. C. , 20515

Dear Senator Abouresk:

On behalf of the National Tribal Chairmens Association, I am pleased to lend our full support to S 2460.

As you are aware, we have on several occasions expressed our concerns relative to problems associated with the implementation of PL 93-638. The potential for the development of Tribal Governments, under the Act, have not been fully realized.

S 2460 would certainly be a preferred mechanism to attain both long and short range goals and eliminate the frustrations of piece meal processing of contracts and grants.

S 2460 however, will pose some additional problems. Small tribes may very well suffer from continuing exclusions, because of their inability to meet planning requisites. Thus, even if the small tribes would prefer to utilize the Consolidated Grant approach, their lack of resources for planning assistance would make the exercise of the additional option, prohibitive.

Since neither the BIA or IHS have, to date, exhibited the capability to provide quality technical assistance for annual contracts or grants, it is not likely that the expertise needed by small tribes, will be available to meet long range requirements.

Unless the Congress can effectively monitor the technical assistance performance of BIA and IHS, smaller tribes will continue to be frustrated in their attempts to achieve intended developmental goals.

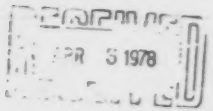
Respectfully submitted,

Erin Forrest

EF:mw

March 30, 1978

Senate Select Committe on Indian Affairs



Re S. 2460 - Amendments to 93-638

I understand you have received a number of suggestions regarding this bill so my comments may be redundant. I can only hope that they are not too late and will be useful.

638 is as you have stated still a concept rather than a means of effecting real practical benefit to tribes but it still has great potential. You have, in S. 2460, hit on an approach most likely to achieve beneficial results. Not only is the grant approach an improvement, the addition of T/TA from DOI should be a very positive amendment. The lack of T/TA was the major weakness in 638.

I also think that 638 or 2460 should contain a provision to overcome the problem of exceptionally high (anticipated) administrative costs for any service or program a tribe took over. It is very likely that any individual tribe will experience high administrative costs at the beginning of a program, project or service year. This would be for administrative, management and technical type positions.

The recommendation here is that S. 2460 have a provision to supplement by 10% the basic budget for any service project or program assumed by an Indian tribe whether by grant or contract. This would ensure that the level and quality of the service or program would not be negatively affected. This could be done on a declining basis. That is, the supplement could be reduced by 1/3rd after the first year, another third the second and third years to where the forth year the supplement would not be provided.

There are other possibilities to address the high administrative cost. For example, the tribes could use Title I of 94-437 (The Indian Health Care Improvement Act) to establish management and technical internships. Or Internships or training could be achieved to support tribal 638 or 2460 through Title III, Title II or Title III of the CETA manpower program.

If this were not possible or proved to be too complicated it would be possible to supplement 638 initiatives with ANA (formerly ONAP) funds for administrative costs. This approach would of course reduce or eliminate a tribal community action program but considering the potential long-term benefit many tribes may want to do this.

George Clark

George Clark
Washington, D.C.

MAR 31 1978

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TOBEY B. MARZOUK
STEVEN A. LAUER *
LAUREL BERGOLD
VALERIE K. SCHURMAN
BRUCE T. REESE *
F. THOMAS MORAN

* NOT ADMITTED IN DISTRICT OF COLUMBIA

March 31, 1978

The Honorable James Abourezk
1105 Dirksen Senate Office Building
United States Senate
Washington, D. C. 20510

Dear Senator Abourezk:

We are legal counsel for the National Congress of American Indians; NANA, a Regional Corporation formed pursuant to the Alaska Native Claims Settlement Act; the Arapahoe Tribe of the Wind River Reservation, Wyoming; the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Hoopa Valley Tribe of Indians of the Hoopa Valley Reservation, California.

We would like to comment on S. 2460, a bill to amend the Indian Self-Determination and Education Assistance Act of January 4, 1975. If enacted into law, this bill would allow Indian tribes the option of receiving a single consolidated grant for all programs qualifying under the Self-Determination and Education Assistance Act rather than separate grants for different programs. The bill would give the tribe authority to determine how the grant money would be allocated among the various programs. Under the bill, the Secretary of the Interior would review the tribal plan, but he would not be authorized to disapprove the plan simply because he disagreed with the percentage of funds the tribe had determined to allocate to any given project within the scope of the Act. Instead, the Secretary's review would be limited to determining whether (1) the services to be rendered under the program would be adequate to the beneficiaries; (2) adequate protection of trust assets was assured under the program; or (3) the proposed project in the plan can be adequately completed or maintained by the plan.

The proposed Act provides that a consolidated plan submitted by a tribe may cover a period of up to ten years, or any lesser period of time which the tribe may elect. The tribe would have the right to amend the plan either before the grant or after a reasonable period of implementation.

The proposed Act also provides that the Secretary shall approve a tribal consolidated plan which requires funding up to the amount which the Secretary would have otherwise provided. If the tribal plan requires funding in excess of this amount, the Act provides that, upon the request of the tribe, the Secretary shall conditionally approve the program up to the requested amount. The Secretary would then be required to submit to the appropriations committees of both Houses of Congress both the figure requested by the tribe and the figure indicated in the Secretary's budget. If Congress appropriates the tribal estimate, the tribe's budget would be increased up to that amount.

The bill should not constitute a means by which the Secretary of the Interior can ignore his own trust responsibility or attempt to shift this responsibility to Indian tribes. The goal of Indian self-determination should not be misused to become a prelude to the termination of the federal trust responsibility. We note that under the bill, the Secretary of the Interior would continue to exercise his trust responsibility in the administration of the program; he would simply not be allowed to substitute his judgment for that of the tribe in determining how funds were to be allocated among eligible projects. Since the bill thus appears to be consistent with both Indian self-determination and the trust responsibility of the United States, we do express our support of it.

We appreciate the opportunity to present this statement.

Sincerely,

WILKINSON, CRAGUN & BARKER

R. Anthony Rogers

By: R. Anthony Rogers

TESTIMONY

Hearings before Senate Indian Affairs Committee
on S. 2460 Indian Self-Determination and
Education Assistance Amendments

When we speak about Indian Self-Determination we need to assure real self-determination by having the capability to do so. Not only does this mean the resources of capital, land, equipment, etc., but also the manpower resources. To implement Indian self-determination, we need American Indians who are trained as professionals in all the various activities and functions that a tribe must participate in, both within and outside of its reservation life. The situation is such that there are serious inequities regarding the kinds and quality of health, legal, educational, business, etc., services available on a reservation as compared to the general population of the United States. Although it is well that the government sees the tribes as becoming more in control of the business of running and overseeing their own affairs, it is essential too, that some investment be made into providing trained Indian personnel to accomplish any semblance to self-determination.

It is this investment in people that we (AIS,Inc.) are concerned with. Of all investments made on behalf of the Indian people it would appear that this could be the most direct, in addition to multiplying the benefits over and over. The individuals with the professional degrees would serve as role models for children in the community, while also working effectively with the people of the community to solve local problems according to what is best for the community. We have had outsiders who know little or nothing of the people and the community tell us what is good for us too long; in spite of this general knowledge, little has been done to assure the "returns" to the community.

True, there is partial support for special programs from the BIA such as the MPH program at Berkeley, the education program at Pennsylvania State, and the American Indian Law Program at the University of New Mexico, but these have limited interests. Their objectives and clientele are specific to certain areas of Indian concern. However, a tribe does not have interest or problems in just these areas, but a vast array which would look at the community as a whole. A tribe needs all the professional expertise that can be brought together collectively to promote and inplement realistic goals for the community.

The Office of Education in HEW also has fellowships for individuals pursuing graduate work, but their grants are again limited to the five areas of law, medicine, engineering, business administration, and forestry. It may be well to set priorities, but this should not limit the choices of profession that an individual can pursue. If we as

Indian people agree to these directives and regulations as set by individuals outside the community, then we are denying our own freedom of choice and the pursuit of happiness. Further, if all the funds are invested in these specified fields, we may be getting less quality, in that a person who may have been an excellent historian or musician, may only be a mediocre lawyer or engineer.

Another point is that with the federal monies going to institutions of higher education to administer graduate fellowships, such as Title IX and Title IV, large portions of the congressional allocations intended for grants get siphoned off the top for administrative costs. For instance, the OE-HEW, Title IX, or Higher Education Act, stipulates that the government pay the institution of higher education an allowance that "is equal to the total sum of stipends paid to fellows attending that instituation." This seems as if the institution gets a 100% administrative fee without providing any extra services for these fellows.

"This allowance is intended to pay for the instructional costs of the fellows." In other words the tuition and fees other graduate students pay. Thus it may be that these fellows are paying more than other graduate students for attending the same school. The maximum stipend for a fellow is $325 per month or $2925 for an academic year of nine months (two semesters). Thus, for a student attending say UNM, full-time, where such a program exists, with nine hours of course work, the "regular" graduate student pays $387 for the two semesters ($1134 for an out-of-state student) while the fellow pays $2925 for the same period.

The inequities apparent here do not need to be explained. But the reason for this continued practice does--to the students who are in financial straits because of their desire to pursue an advanced degree. Our experience shows that most graduate students are married and have several dependents to support while they take the time to go to school. Often times these federal programs prohibit the students from engaging in gainful employment. It seems the funds would be more well spent by giving as much as possible to the students directly.

Also, we understand the current administration's emphasis on the implementation of 93-638, and commend efforts towards this end, however, we cannot ignore the importance of a national organization that provides services to tribes nationwide. AIS, Inc. is such an organization. If the higher education monies are contracted out bit by bit to the various tribes in the United States, it is necessary that some of that money be used to support whatever administrative costs are involved in disbursing the funds to tribal members. The overall effect of such an action, if no other monies are provided, would be to seriously diminish what little funds are available for scholarships.

Along this same course, tribal educational agents would be funding only people from their tribe. Tribes would be bidding against each other, and if contracts are based on a per capita count of tribal members, the larger tribes would get more funds and smaller tribes the least funds. Unless, the BIA sets a funding level for all scholarship applicants, which would apply no matter what the particular circumstances of each student. Thus there needs to be some organization that can be unbiased in its efforts to provide all American Indians this much needed professional leadership and expertise.

AIS, Inc.'s costs for administering graduate scholarship funds have been very low compared to the costs stated above. For instance, this academic year we were able to fund 229 students from a BIA contract giving us $700,000 from October 1, 1977 to August 31, 1978. The administrative costs from this amount totaled $76,945.91, or 11% of the funds contracted from the Bureau. This left $623,054.09 in direct student support. However, even this was not enough, as we were not able to fund everyone the full amount they needed, nor were we able to fund all the applicants. From over 300 applicants for the 77-78 academic year we were able to fund only 229, and that was by stretching the funds as far as possible.

By the end of Febrary we had many applications already for the 78-79 academic year, with approximately two to four per day arriving in the daily mail. This yearly increase in graduate applicants is indeed encouraging and heartening to see, but at the same time alarming, because we do not have the financial resources to assist them.

Carlotta P. Concha

Approved: John Kramer

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN
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FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON

November 10, 1977

OUR REFERENCE

RECEIVED
NOV 16 1977

Ms. Kathryn H. Tijernia
3158 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Re: Proposed Amendment to P.L. 93-638

Dear Kathy:

My apologies for not getting to you my comments on the proposed amendment to Public Law 93-638 sooner. Several crises have intervened.

As to the draft bill, I have the following thoughts.

The new section 105 is intended, as I understand, to simplify the procedures by which a tribe may administer a Bureau program or programs by allowing the tribe, at its option, to obtain a "block grant" instead of a contract. I think it is important to look very closely at the ways in which the amendment would actually realize this intention and also at ways in which it might have the opposite effect.

First, as to the positive side, by obtaining approval of a section 2 plan, the tribe will be enabled to move funds around within the activities covered by the plan. Apparently, under section 2(b)(2), section 2(c)(2), and section 4 the tribe has the absolute right to set funding priorities within the limits of the dollars covered by the plan, subject, of course, to the declination criteria (repeated from the existing law in section 2(c)(1)). If the tribe's plan requests more money than the Bureau expects to have under the President's budget request to Congress, the Secretary is required to submit the tribe's request to the Congress with appropriate information comparing the tribal request to the Presidential request. Inclusion of funds requested in the plan remains, of course, conditional on the Congressional appropriation.

On the negative side, I am concerned as to whether the bill really affords to tribes increased budgetary flexibility.

First, does the bill really authorize a tribe to move funds around from one budget activity to another so long as the total amount covered by the plan does not exceed Congressional appropriation? As noted above, it gives the impression that it does this, but what is the effect of the language in section (c)(4) directing the Secretary to approve a plan "which required funding up to the amount the Secretary would have otherwise provided for his operation of the program or portion thereof for the period covered by the plan."

Suppose a tribe's plan covers all agency operations, including social services, law enforcement, education, realty services, land operations, etc. I have the following questions as to how the amendment would work under this situation.

(1) Would a tribal plan be able to increase the portion of the budget used for counseling services for welfare clients and decrease the amount for grants (i.e., "hand-outs"), or would such a change require Congressional action?

(2) Would the tribe be able to transfer funds from education to law enforcement, or vice versa, or from land operations to education, etc., if these are its choices, or could the Bureau take the position that Congressional action was necessary to make such transfers? The answer to this and the foregoing question is necessary in order to be able to explain what the term "program" means in section (c)(4).

(3) Section (c)(4) provides that the amount which the Secretary would otherwise have for operation of the program shall "include direct costs, indirect costs and administrative costs for the operation of the program."

This language contains an ambiguity which could lead to a curtailment under the amendment of an important right which tribes now have under the present Act and 638 contracting procedures. Does the phrase "indirect costs and administrative costs" refer to the Bureau's indirect costs and administrative costs and require that these be included in the plan budget? Or does it mean that tribal indirect costs must come out of the maximum determined under section 2(c)(4)?

Under the present 638 regulations a tribe is entitled to at least the Bureau's own program costs (including BIA administrative and indirect costs) plus tribal indirect costs based on the negotiation of an overhead rate with the Interior Department's Office of Audit and Investigation. Without this provision, a tribe would be required to subsidize the operation of the program in order to manage it under 638.

(4) While the requirement that tribal requests in excess of the BIA funding level be presented to the Congress is desirable, it certainly provides no assurance as to the availability of funds for the tribal plan.

(5) In view of the foregoing, I have some doubt as to whether the amendment would really provide greater budgetary flexibility to tribes than they have now under 638 contractirg procedures provided such procedures are followed by the Bureau and the Indian Health Service. Instances in which the agencies have not followed their own regulations and procedures have occurred. If a tribe is knowledgeable and aggressive in insisting on its rights under the regulations, the agencies (at least the BIA) have, in my experience at least, been forced into compliance.

(6) One continuing problem is the uncertainty as to what is the amount of the tribal entitlement under the language "the amount that the Secretary would have otherwise provided for his operation of the program or portion thereof for the period covered..." The use of this language in the amendment carries the same problem over from the contracting situation. The Bureau's internal bookkeeping procedures are such that it may well be impossible to determine the amount spent by the Bureau on the program up to the point of contracting (see enclosed letter from the Juneau Area Office), leaving the decision as to the amount available for the future in the arbitrary discretion of the Bureau.

On the other hand, the statutory language has proved useful to the tribes. In almost every instance of which I am aware the Bureau has ultimately agreed that "the Secretarial funding level" was actually higher than it first said it was.

(7) It may be that one of the reasons for expressions of support for a "block grant" is the desire of tribes to eliminate mandatory contract clauses now included in 638 contracts. I do not believe that the amendment would have any effect on this issue. Each Secretary can under P.L. 93-638 now draw up standard mandatory clauses for 638 contracts without reference to other contracting laws. I note that the amendment does not contain any specific authorization for the issuance of regulations. I assume that this is because section 107 of the existing Act would be applicable. Under section 107 the Secretaries will undoubtedly promulgate regulations providing for standard grant conditions. It can be anticipated that these conditions would cover many of the same matters now covered with such variations as the respective agencies consider appropriate in view of the use of a "grant," instead of a "contract." HEW grant conditions have historically been extremely complex and often irrationally burdensome to grantees.

(8) I note that in section 1(b) the Secretary of the Interior is authorized but not directed to make grants under approved plans although under section 2(a) he "shall provide financial assistance..." To clarify this ambiguity I suggest that "and directed" be inserted after "authorized" in section 1(b). ✓

(9) Is it intended for the Secretary of the Interior to make grants from funds appropriated to HEW which section 1(b) seems to indicate? Is this workable?

(10) One final question: Doesn't the requirement for preparation of the "plan" add an additional layer of paper work in the event that the amendment is interpreted to require the processing of a "plan" and then the processing of a grant application?

Again, my apologies for the delay in transmitting these thoughts. I appreciate the opportunity to comment. Don't hesitate to call if you have any other questions. I would like very much to see any subsequent version of the bill.

Sincerely,

S. Bobo Dean

RECEIVED OCT 26 1977
IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Juneau Area Office
P. O. Box 3-8000
Juneau, Alaska 99802

October 20, 1977

S. Bobo Dean
Fried, Frank, Harris, Shriver
& Kampelman
Suite 1000, The Watergate 600
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Dear Mr. Dean:

During fiscal years 1971 through 1977 no record was kept of the road maintenance dollar amounts spent at Annette Island. Our reporting system records the money spent by the type of work performed on an Area-wide basis. In the past we have not differentiated as to the amount spent in the various villages. The best information we can give you is an estimate based on the number of locations we worked at and the Area budget for that particular year. The following figures represent such an estimate:

Fiscal Year	Amount Spent at Annette Island
1971	$20,000
1972	20,000
1973	18,000
1974	19,000
1975	20,000
1976	25,000
1977	35,000

Sincerely yours,

Joseph E. Kahlen
Area Director

RECEIVED NOV 7 1977

COUNCIL ANNETTE ISLANDS RESERVE

WALLY LEASK, MAYOR
MARGARET MARGUS, SECRETARY
RONALD MILNE, TREASURER

METLAKATLA INDIAN COMMUNITY
TOWN OF METLAKATLA
P.O. BOX 8

METLAKATLA, ALASKA 99926
ESTABLISHED 1887

October 31, 1977

Clarence Anticoquia, Area Director
Juneau Area Office
P.O. Box 3-8000
Juneau, Alaska 99802

RE: Metlakatla Indian Community
Roads Maintenance Program

Dear Mr. Anticoquia:

This is in response to the Area Office's letter of October 20, 1977 to the Community's Eastern Counsel, S. Bobo Dean, which informed Mr. Dean of estimates of road maintenance dollars spent at Annette Island. As you know, the Council had this information requested in order to develop a proposal to contract the Annette Islands roads maintenance program under P.L. 93-638.

The Council vehemently protests this letter. The letter is an insult to the Metlakatla Indian Community. The letter has grave implications as to the relationship between the Area Office and the Metlakatla Indian Community and reflects an attitude in the Area Office which seriously undermines the Federal government's policy of Indian Self-Determination.

In light of the Council's dissatisfaction with this response, the Council hereby formally requests pursuant to 25 CFR § 271.16 description of the Annette Islands Reservation Roads Maintenance Program as operated by the Bureau and an identification of the Bureau's direct costs for the program.

Yours truly,

METLAKATLA INDIAN COMMUNITY

Wallace D. Leask

Wallace D. Leask, Mayor

cc: S. Bobo Dean, Esq
Tsimpshean War Canoe

NAVAJO COMMUNITY COLLEGE TSAILE, NAVAJO NATION (ARIZONA) 86556
DEVELOPMENT OFFICE
SHIPROCK BRANCH - BOX 580
SHIPROCK, NEW MEXICO 87420
505-368-5131
505-368-5132

November 4, 1977

Senator James Abourezk, Chairman
Select Committee on Indian Affairs
Dirkson Senate Office Building
Room 5325
Washington, D.C. 20215

Attn: Katherine Harris Tejerina

Dear Senator Abourezk:

Thank you for providing me with a copy of your proposed amendments to PL93-638. While I am not familiar with all the problems associated with contracting and grants pursuant to 638, I have just recently become aware of the requirements outlined in 638 regulations regarding front end money.

In studying your proposed amendments I've arrived at the observation that the block grant mechanism proposed is not fully the answer to front end funding. Especially since in your cover letter you indicate that the contracting and grant provisions now in 638 would be left intact. While the block grant approach may be looked upon as the answer to front end money availability, block grants are normally only a consolidation of several categorical grants. By retaining the rules prescribed in Section 276.10 of 638 regulations regarding grants, a disoursement procedure is layed out inhibiting advanced funding as, I'm sure, Indian tribes would like to have.

A case in point is the Navajo Community College's inability to receive funds in advance due to the specific regulation cited above. BIA is indicating that it can only advance 1/12 of NCC's annual allocation based on projected monthly expenditures. NCC would rather have 25% of its annual allocation in advance but the BIA cites Section 276.10 which prohibits advances in amounts necessary to start-up a program.

To circumvent this problem, I would suggest that the words, "The amount approved for grants shall become available in advanced quarterly increments for obligation on October 1 of each Fiscal Year and shall remain available until obligated," be inserted in the appropriate place. This is paraphrased from Section (103). (a) (1) of PL93-383 which I believe is the first time the block grant mechanism was used.

Of course, there will be need for additional language to clarify the point. Another suggestion might be that 80% of grant funds be advanced to each grantee at the start of a program and 20% paid out prior to closing out of a grant period or Fiscal Year.

Whichever way the advanced funding problem is addressed, it will most certainly require changing the regulations and or authorizing the Secretarys to waive any requirements when lack of sufficient cash flow will create undue problems.

I hope the above will be of some use.

Sincerely,

James S. Hena

James S. Hena
Director
Development Office

25-601 O - 78 - 7

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

APR 1 4 1978

PETER MACDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL

WILSON C. SKEET
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

The Honorable James Abourezk
United States Senate
Select Committee on Indian Affairs
5331 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Abourezk:

Here are the comments of the Navajo Nation concerning S.2460, the Indian Self-Determination and Education Assistance Act amendment.

We are in total support of the bill. As you will recall, at the Senate Select Committee on Indian Affairs oversight hearing on Public Law 93-638 held in Albuquerque, New Mexico, in June, 1977, we presented a lengthy written statement and an oral statement delivered by myself. In both of these presentations we explained how Public Law 93-638 does not actually allow meaningful tribal self-determination. It merely provides a mechanism for contracting BIA and IHS programs.

As you well know by now, the contracting mode of dealing with the BIA and IHS leaves much to be desired. Although the intent of "638" is clear, the BIA and IHS still has an open opportunity to delay, impede, camouflage, and otherwise hinder the "self-determination" efforts of Tribes. And they are masters at this.

The only way to avoid this is not to begin contracting negotiations with them. This is where the value of grants is realized. As I stated in Albuquerque, the mechanism through which state and local governments receive federal funding to carry out programs to serve their citizens is that of grants. The grant mechanism allows greater flexibility in the design and conduct of programs, and puts the federal grantmaking agency in much more of an "arm's length" relationship to the local or state governmental entity receiving the funds. If the $31 million that the Navajo Tribe contracts from the BIA were to become a single line item in the Bureau's budget for Fiscal Year 1979, and were to be set aside as an entitlement to the Navajo Tribe, to be awarded as a grant upon submission of plan for its use, taking into account all the other needs of the Navajo Tribe and the resource available to it, we would, for the first time, be able to use these funds for purposes related to Tribal priorities, rather than continuing to accommodate the self-protective instincts of a federal bureaucracy.

In one major area we are already using a similar approach. For this year we receive a single "block" grant from the IHS. This grant is administered by our Division of Health Improvement Services which then awards sub-contracts to other health service providers. This process does not need to require the permission of either the Secretary of the Interior or H.E.W. however.

To make this more workable, it is important that sufficient funds are available to allow for indirect costs at the "actual audited cost level." Our experience with "638" thus far shows that this is a major problem. To illustrate this, concerning the BIA, we receive only $200,000 of an estimated need of $2.8 million for indirect and contract support costs. The situation with the IHS is similar. It might be important to point out that the "Federal Grant and Cooperative Agreement Act", Public Law 95-224, which defines contracts and grants and eligible governmental entities, does not mention Indian tribal governments. We hope this will not develop into a problem. We would appreciate you looking at this and advising us of your findings.

With this I would like to urge you to take all steps to see that this bill is passed into law and please let me know if there is anything I can do to help achieve this. Your support and attention to Indian affairs is to be commended and I sincerely appreciate your work.

Respectfully,

Peter MacDonald, Chairman
Navajo Tribal Council

NATIONAL INDIAN MANAGEMENT SERVICES, INC.

March 29, 1978

APR 3 1978

Honorable James Abourezk
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Senator Abourezk:

Thank you for forwarding a copy of the proposed amendment to Public Law 93-638, S.2460.

I believe you have introduced legislation which could provide valuable flexibility to tribes that would wish to take advantage of it in pursuing the course of Indian Self-Determination. Of course, all tribes may not wish to take advantage of this new option in a Title III of the Act. Some tribes may prefer the relatively more secure contract mechanism, under which cost overruns are allowed regularly, over the grant approach, under which, when the dollars run out, they are gone, whether or not it is the end of the fiscal year or not. Of course, tribes with adequate financial and reporting systems should not run into trouble with grants.

I believe language could be included to clarify section 302 (c)(6) somewhat as it pertains to the Band Analysis and the current Congressional budget process. Should a tribal plan based on the current budget level for, say, three current Bureau programs, what happens to the allocation in the next fiscal year? Will it be based on a division of the grant amount into three arbitrary parts for the purpose of calculating the President's budget request? Were the line items to be maintained, this would be no problem. However, I interpret section 302 (a): "a single consolidated grant in lieu of or in addition to the contracts under sections 102 and 103" as allowing the prioritization in use of line item funds to occur at the tribal level; for example increasing funds for Agriculture Extension Services because of assignment of a lower priority to Soil and Moisture Conservation-type activities. I fear that contract funds converted to grant use could be lost along the line in the budget process unless proper safeguards are prescribed in the bill.

It would also be extremely helpful to many of the tribes that our firm has aided in the past, if the bill could contain some solution for the dilemma tribes face in the approval of indirect cost rates. I discussed this problem in a letter to OMB, a copy of which was published (on page 461) in the record of the hearings before the Select Committee on Indian Affairs on the Implementation of Public Law 93-638, June 7 and 24, 1977.

The reply (attached) which we received from OMB said that BIA maintained it had "not received any correspondence on this subject from tribal governments or organizations representing tribal governments." We ourselves have written several. The letter goes on to state that "OMB has not yet prescribed cost principles for Indian Tribal Governments," yet our client tribes are being required to sign off on "Certification by Agency Government Official" form that their indirect cost proposals conform with FMC 74-4.

The final and task force reports of the American Indian Policy Review Commission repeatedly decry the lack of support for general costs of tribal governments. Without the requirements of FMC 74-4, these costs could certainly be considered indirect. Tribal governments are simply not the same as state or local governments, and their circumstances are unique. Tribes were set up under the auspices of the Indian Reorganization Act, which make them, legally, unique entities. Perhaps some language could be added to the bill to make this fact clear to OMB and Interior in the negotiation of indirect cost rates.

Over-all, I believe the bill to be a positive development, and thank you for the opportunity to comment on it.

Sincerely,

Phillip Martin
President

Enclosures

NATIONAL INDIAN M[illegible]MENT SERVICES, INC.

RECEIVED
APR 3 1978

Mr. Ray Butler, Acting Commissioner
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D. C. 20245

Dear Ray:

Since I left the position of Tribal Chairman of the Mississippi Band of Choctaw Indians in July, 1975, we have established National Indian Management Service, Inc. (NIMS). NIMS is an Indian-owned management consulting firm established to provide training and technical assistance services to recipients of of federal grants and contracts (i.e., Community Action Agencies, health boards, tribal governments and associations, school boards, etc.) Having served 18 years in tribal government (10 years as Tribal Chairman), I feel that the knowledge and experience gained enables our firm to be of great assistance to tribal governments in developing a viable organization which meets the requirements of federal agencies.

We have been working, primarily, with Indian tribal governments throughout the country — having successfully completed six contracts. We have visited numerous tribes, seeking business under P.L. 93-638 requirements, and we would like to relate to you some of the problems that we have encountered and make recommendations that we feel could be helpful in implementing the intent of self-determination for tribal governments. We discussed Training and Technical Assistance programs under 93-638 with Mr. Wayne Chattin, of your staff, during a visit on March 23.

There is no doubt in our minds that good management is a major factor in Indian controll of Indian affairs. On our visits to various tribes we find that many are in need of down-to-earth assistance in the development of basic skills. We have found that training of people at the local level has been grossly lacking, and that without adequate technical assistance, tribes are placed in the dilemma of wanting to gain control of their institutions, but not being capable. Many firms and the government itself provide assistance piecemeal, in short visits or off-reservation training sessions, which leads to confusion, inadequate information, and inadequate follow-up. We believe a more realistic approach is to provide long-term in-depth, on-site assistance to tribal officials, administrators, and fiscal and program staff which would be designed on their level and meet their specific needs.

We have interested several tribes who wanted to do business with us, but they have not been able to utilize our services because of bureaucratic procedures involved in the use of training and technical assistance funds. In our recent visits with the Anadarko Area Office, we were informed that the Area Office was allocated $1,058,498 for 638 grants for FY '77, of which 23.24%, or $246,000, was held back

by the Area Office for T & T.A. We were, also, told that we would have to go to the Tribes and interest them in our services and that the tribe would make the decision on who they wanted to provide such services — which we did. We found that this is not true. As an example, we visited and met with officials of several tribes regarding our desire to provide assistance in the development of a Comprehensive Management Plan which would include organizational and financial management systems; training of personnel; and the development of an Indirect Cost Proposal and Cost Allocation Plan, all of the above, in accordance with the requirements of P.L. 93-638. The Tribe was then instructed by the Area Office that they would have to solicit bids from 3 firms for their review. The Tribe obtained the 3 bids, and submitted them to the Area Office -- designating our firm as their choice. Although the Tribe wanted our services, the Area Office made the selection on the basis of lowest bidder. We have invested a considerable amount of time and money on the belief that the Tribe had the right to make the selection and that the Area Office was there to lend their support. So, in the final analysis, the Tribe does not make the selection but has to be satisfied with whom the Area Office selects.

After considerable time, we were fortunate enough to complete one contract with a Tribe in the Anadarko Area — for the development of an Indirect Cost Proposal and Cost Allocation Plan. Although the Tribe submitted our payment vouchers to the Area Office in January, we have not, to this date, received the first dollar for our work — we have been informed that these vouchers are still in the Area Office. Another example — in the Aberdeen Area, we completed a contract with a tribe in October, 1976, and, as of this date, we have not received final payment for these services although the Tribe submitted the vouchers sometime ago. The policies of the BIA are not consistent throughout the nation. For instance, working with 3 tribes in the Eastern Area, the Area Director has worked directly with the tribes and supported them on the procurement of T & T/A services according to their wishes. This is the approach, I believe, which should be instituted nationwide.

The purpose of this letter is to identify certain weaknesses in the regulations of P.L. 93-638, and to make some recommendations which would speed-up the process and be beneficial to the tribes.

- Ideally, the grant and technical assistance portion of 638 should be administered out of the Central Office and negotiated directly with the tribal governments. The Central Office could establish a grants management office which would provide the following functions: 1) grant processing; 2) contracting; 3) T & T/A; and 4) monitoring and evaluation. This would eliminate red-tape at the Area and Agency levels. Precedence for granting of funds to tribal governments has been set by programs such as OWAP, OE, DOL, and others. If the Tribe wishes to contract BIA-operated programs at the local level the Tribe could then negotiate through the local Agency.

- We recommend that awarding of grants should include built-in technical assistance money so that the tribe can buy T & T/A and utilize the firms that they wish to use without having to get approval from everybody in the country. Funds in the local budget would eliminate red-tape

and would expedite the procurement and payment for these services. This would place more responsibility on tribal governments for the management and implementation of their own affairs in accordance with P.L. 93-638 and the intent of Congress.

- We think that the regulations, specifically Part 276.16, Sections C.9. and D.6., should be changed to allow tribal officials to participate fully in 93-638 and be compensated as administrators of tribal governments. The economy of many tribes is dependent upon federal funds (i.e., BIA, IHS, and tribal). Tribal governments, in many cases, do not have their own tribal funds to compensate tribal officials for their duties and employment. The intent of the law was to strengthen tribal governments. However, if tribal officials are eliminated, by virture of their position, it seems that self-determination and strengthening of tribal governments cannot become a reality for the Tribes. If, however, a tribal official must receive prior approval for full-time salary (as specified in the Federal Register — Part 276, Section C.9.), from the BIA, we recommend that it not be at the Agency Superintendent or the Area Office level, but from someone that the Commissioner designates at the Central Office. This would minimize direct control of federal officials over local tribal officials.

- We would recommend, in connection with the above, that BIA not force the tribes to comply with the provisions of FMC 74-4 (Attachment B, Section D.6.) which places tribal officials in the same category as state and local officials (unallowable costs.) This has been interpreted under 638 regulations; however, the language in FMC 74-4 has no reference to tribal councils or officials. Federal, state and local governments are operated on funds derived from a tax-base system. It is true that some tribal constitutions provide for the taxation of their constituents — this is unrealistic due to the poor economy and low income of the people on the reservations.

- We recommend that the Indirect Cost Proposal and Cost Allocation Plan developed by the Tribe be submitted directly to the appropriate Department of the Interior's Office of Audit and Investigations with a copy forwarded to the appropriate Area Office for their information. Just a point of information regarding Indirect Cost Proposals, the various federal agencies (HEW, DOL, BIA, etc.) are requiring that rates be established by their own agency — this sometimes requires several proposals for each tribe, thereby creating more expense to the Tribes.

- We would recommend that the procurement procedures and regulations pertaining to T & T/A services for tribes, with private firms, be waivered to the extent that Tribes would not have to follow the bid process for BIA-controlled T & T/A service contracts in amounts up to $15,000. Most tribes do not have the staff and/or the expertise required to handle the bid process, as required by BIA, and generally the need for assistance is crucial and prevalent. We believe it is in the best interest of the Tribe to solicit proposals to determine which firms would provide the services they need, and once the selection has

been made by the Tribe it should be honored and respected by the BIA. It is difficult for tribes and small business concerns to go through this long-term negotiation for service contracts for such small amounts.

- We would recommend that the Federal Procurement Regulations (Section 1A8-70.610) pertaining to "Use of Indian Business Concerns" in sub-contracting be enforced.

- Last, but not least, we would recommend that prior to the annual meeting to consider revisions to P.L. 93-638, that BIA establish a Task Force composed of persons knowledgeable in tribal government operations and who have experienced problems in attempting to implement these regulations (through T & T/A contracts with tribes), to study and assess their effectiveness. Any changes in the 93-638 regulations should be recommended and endorsed by a majority of the Tribal Chairmen.

We do not intend to sound as if we have a bone to pick with the BIA or 638, but we are concerned since the concept of 638 and the intent of Congress was sold and endorsed by the Tribes throughout the country. This was a ring to be a program designed to let the tribes plan, develop and manage their own affairs.

Also, we think that it is time to consider President Carter's commitment to re-organize the branches of government to eliminate inefficiency and duplication of services. We feel that it is an opportune time for the BIA to develop a new system which would be responsive, supportive and servant to the Tribes.

We would appreciate receiving any comments you have concerning the contents of this letter.

Sincerely,

Phillip Martin
President

PM:wt

cc: Wayne Chattin
Office of the President
Cecil Andrus, Secretary of the Interior
James Abourezk
Sidney Yates
James O. Eastland
John C. Stennis
G. V. Montgomery
David Bowns
Jamie Whitten
Chuck Trimble, NCAI
William Youpee, ETCA

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 12, 1977

Mr. Phillip Martin
President
National Indian Management
Services, Inc.
P. O. Box 498
Philadelphia, Mississippi 39350

Dear Mr. Martin:

This is in reply to your letter of July 1, 1977, which questions whether the cost principles covering State and local governments in FMC 74-4 should be applied by the Bureau of Indian Affairs to Indian Tribal Governments.

One specific problem that you mentioned in your letter was the provision in the cost principles which makes salaries and expenses of general government unallowable. You stated that the Bureau of Indian Affairs has included Indian Tribal Governments under this provision and strict enforcement of this could be disastrous. We brought this matter to the attention of the Bureau of Indian Affairs. They contend that they have not received any correspondence on this subject from tribal governments or organizations representing tribal governments. Further, they stated that many tribes have been given approval to fund salaries of tribal officers in connection with grant projects. You may want to follow up with them with your specific problems.

As you probably know, OMB has not yet prescribed cost principles for Indian Tribal Governments. Therefore, the Bureau of Indian Affairs and other Federal agencies have discretion as to whether they use the State and local cost principles. However, we believe that one uniform set of cost principles is needed for Indian Tribal Governments, and we are working toward this goal with the Federal agencies and other interested parties.

Based on our work to date it appears that the FMC 74-4 cost principles might be appropriate for Indian Tribal Governments. However, before promulgating any principles for Indian Tribal Governments, we will make a careful

analysis of the applicability of provisions such as the one mentioned in your letter which may make the cost of Indian Tribal Councils unallowable.

If there are any other parts of the FMC 74-4 cost principles which you feel are not applicable to Indian Tribal Governments please let us know.

Sincerely,

Palmer Marcanton
Financial Management Branch
Budget Review Division

LEGISLATION COMMITTEE

Policy Resolution No.5
AMENDMENT OF P.L. 93-638
Adopted September 22, 1977

WHEREAS: The Indian Self-Determination and Education Assistance Act (P.L. 93-638) was passed by Congress for the purpose of facilitating transfer of control over Bureau of Indian Affairs and Indian Health Services to Indian tribes and tribal organizations through the contract process;

WHEREAS: A corollary purpose of P.L. 93-638 was to bring about a basic change in the organization and structure of the Bureau of Indian Affairs and Indian Health Services in their relations with Indian tribes; and

WHEREAS: Oversight hearings before the Senate Select Committee revealed that Indian tribes have encountered serious difficulties in the implementation of 93-638 in the following areas. (1) The process of contracting has discouraged Indian tribes from assuming control over Bureau of Indian Affairs and Indian Health Services because of the inordinate amount of bureaucratic forms and red tape associated with contracting.

(2) The Self-Determination Act has resulted in only minimal change in the organization and structure of the Bureau of Indian Affairs and Indian Health Services but rather, the charges are constantly made that the Bureau of Indian Affairs has attempted to make P.L. 93-638 simply another Bureau of Indian Affairs program.

(3) A consistent lack of flexibility in the type of services which are available for contracting and the nature of the services that are subject to contracts have proved to be seriously limiting.

(4) The funding levels identified as available for contracting are too often less than the Bureau of Indian Affairs' own levels and tribes are penalized with costs associated with contracting.

WHEREAS: Amending P.L. 93-638 to provide for a system of consolidated block grants in lieu of contracts for each individual Bureau of Indian Affairs or Indian Health Service program along with a restriction on administrative review and interference, and providing for a method of lump sum prepayment to each tribe at the beginning of each service year in lieu of the letter of credit reimbursement system would greatly alleviate many of the administrative and budgetary difficulties in the 638 contracting process; and

WHEREAS: Integration of other Federal Domestic Assistance Program grants with BIA-IHS would greatly expand Indian tribes' access to very helpful government programs.

THEREFORE BE IT RESOLVED the National Congress calls upon the Congress to expedite amendment of P.L. 93-638 to authorize a change from a contracting system to consolidated block grants.

AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

WEDNESDAY, MARCH 22, 1978

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room S–207, the Capitol, Senator James Abourezk [chairman of the committee] presiding.

Present: Senator Abourezk.

Staff present: Alan Parker, chief counsel; Kathryn Harris Tijerina, staff attorney, and Michael Cox, minority counsel.

Chairman ABOUREZK. The hearing will be in order.

The purpose of this morning's hearing is to give testimony on S. 2460, a bill to amend the Indian Self-Determination and Education Assistance Act. Earlier, on March 14, 1978, this committee heard from a panel of tribal witnesses who spoke in support of the bill and this morning we have scheduled witnesses for the administration who I understand will be speaking in opposition to the bill.

Although the Indian Self-Determination Act is only 3 years old, a great deal of controversy has surrounded implementation of this law by the BIA and Indian Health Service. As we noted in last week's hearing, this committee's oversight essentially formed the record upon which S. 2460 is based. There is a clear need to streamline and simplify the process through which Indian tribes may attempt to gain some control over the delivery of Federal services on their reservations. At the same time, previous testimony before this committee underscored the need to free the tribes from the continuing policy, programmatic, and excessive budgetary control exercised by BIA and IHS officials.

The first witnesses this morning are from the Department of Interior. They are Forrest Gerard, Assistant Secretary of the Interior, and George Goodwin, Deputy Assistant Secretary.

I am pleased to welcome you.

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY OF THE INTERIOR, INDIAN AFFAIRS, ACCOMPANIED BY GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY

Mr. GERARD. Mr. Chairman, we have submitted a formal report on S. 2460 to the committee as well as a prepared statement. With your permission, what I would like to do is summarize the statement.

We have George Goodwin, my deputy, as well as several others to respond to specific questions the committee may have.

Mr. Chairman, I am pleased to testify today on S. 2460, which is intended to further facilitate the tribes' abilities to assume control and management of activities currently administered under Departments of the Interior, and Health, Education, and Welfare.,

As a staffer from the former Senate Interior Committee working on the legislation that led to the enactment of the Indian Self-Determination and Education Assistance Act, I am aware of the congressional intent of that landmark legislation. Briefly, again, it provided the statutory right for tribes to formally assume control of programs and activities of the Bureau of Indian Affairs and the Indian Health Service.

As the committee is aware, the final rules and regulations did not go into effect until late 1975. So, we are really just into the second full fiscal year of Public Law 93–638. I think it is fair to say that there have been a lot of growing pains on the part of both the beneficiary tribes and certainly the agencies in trying to work out the details for an orderly implementation of this new policy.

As of January 18 of this year, we can point to the fact that we had about 537 Public Law 93–638 contracts for a dollar value of about $137 million. So, I think there is certainly evidence that the tribes want to exercise the rights under the act.

Unfortunately, we have only implemented a management information system relating to 93–638. I personally found the absence of such a system a very serious handicap in our efforts to evaluate the Bureau's implementation of the act. We are hopeful, however, that this system will provide us with information the minute a contractor grant is approved through all stages of action on it.

I want to turn now to a new activity that we are involved in regarding the Joint Funding and Simplification Act. We are currently working cooperatively with the Cheyenne and Arapahoe Tribes of western Oklahoma. They are undertaking to work out packaging of programs utilizing the Joint Funding and Simplification Act.

Just for the record, that act offers a procedure whereby tribal organizations which have several Federal agencies funding local programs may simplify their management systems such as financial, property, procurement, control, and personnel. It can also simplify the reporting requirements in audits, establish a common fiscal year, establish funding on single letters of credit, permit consolidation of quarterly reporting, and provide one single annual audit and a single annual evaluation.

The Bureau of Indian Affairs is currently taking the lead in that effort with the tribe. We are also looking at the Salt River Pima-Maricopa experience under the Joint Funding and Simplification Act. We were not the lead agency in that effort, but, if the tribe desires that we become so, we are willing to do it.

We believe that this new authority, coupled with the potential under the Federal Grant and Cooperative Agreement Act, which intends to establish a clearer government-wide distinction between "contracts," "grants," and "cooperative agreements" as used by Federal agencies, give us the new tools that we really have not yet fully utilized, and offer the opportunity for tribes and the agencies to do a better job of consolidating their funding from several sources.

Under that newer act, our authority is broadened so that, as appropriate, we may make grants and enter into cooperative agreements as well as contract with tribes

The OMB guidelines have not yet been fully developed to implement the new act. So, we are not in a position yet to fully assess its relationship to Public Law 93–638.

In conclusion, we believe we have the tools available to us that we have not yet fully used or are only beginning to use which can improve the opportunities for tribes not only to contract under Public Law 93–638, but to simplify and consolidate some of the funding from other sources as well.

For those reasons, and more detailed reasons set forth in our report, we would recommend against the enactment of S. 2460 at this time. We would be more than willing, of course, to report to the committee on our experience in the Cheyenne and Arapahoe effort as well as whatever experience we can gain from the Salt River exercise as well.

That concludes my summary, Mr. Chairman. We would be pleased to respond to any questions.

Chairman ABOUREZK. Your full prepared statement, the report of the Department of the Interior on S. 2460, and a memorandum from Senator Robert C. Byrd, chairman, Senate Subcommittee on the Department of the Interior and Related Agencies, Senate Committee on Appropriations on reprograming guidelines will be placed in the record.

[The material referred to follows:]

STATEMENT OF FORREST GERARD, ASSISTANT SECRETARY OF THE INTERIOR (INDIAN AFFAIRS) BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, HEARING ON S. 2460, A BILL TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT", MARCH 22. 1978.

Mr. Chairman and members of the Committee, I am pleased to testify today on S. 2460 which is intended to facilitate tribal assumption of control and operation of certain activities provided for Indians by the Departments of Interior and of Health, Education, and Welfare.

From my work with Senate Interior Committee during the several years of legislative activity leading to the enactment of the Indian Self-Determination and Education Assistance Act, I am aware of the intent of that landmark statute. Indian tribal governments were given the statutory right to assume certain activities of the Bureau of Indian Affairs and of the Indian Health Service.

As the Committee is aware, the initial regulations implementing the Act went into effect in December of 1975 and we are now in the second full fiscal year of operation under those regulations. The extensive consultation process during 1975 that led to the issuance of the regulations, the training sessions for BIA and tribal staffs during the past two years, and the experience gained by those staffs during that time can be expected to result in increased efficiency and interest by the tribes in contracting under the Act.

Within the past few months we have had training sessions and have begun implementation of a management information system relating to the implementation of PL 93-638. I found the absence of such a system a

severe handicap in evaluating the BIA's implementation of the Act. The system will track a contract or grant application from the time of its receipt through all stages of action on it.

We are also in the beginning stages of a Joint Funding Simplification Act undertaking with the Cheyenne-Arapahoe Tribes of Oklahoma in which the BIA will be the lead Federal agency in an undertaking by the tribe which will involve funding from several Federal agencies. Such a joint undertaking is now underway involving the Salt River Pima-Maricopa Indian Community in Arizona and although the BIA is not now a part of the Salt River arrangement, we will be watching it with great interest and will join the arrangement if the tribe so requests.

We believe that the Salt River and Cheyenne-Arapahoe expereience under the Joint Funding Simplification Act could lead to greatly improved mechanisms thereby tribes may undertake more comprehensive planning to meet their needs. In addition, the tribes can be expected to benefit by better coordinated implementation and simplified administration of their Federally aided activities.

A recent development that may effect our implementation of PL 93-638 is the Febraruy 3, 1978 enactment of the "Federal Grant and Cooperative Agreement Act". That Act intends to establish a clearer government wide distinction between "contracts", "grants", and "cooperative agreements" as used by Federal agencies. Under that Act our authority under PL 93-638 to contract is broadened so that, as appropriate, we may make

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grants and enter into cooperative agreements as well as contract with tribes. However, the OMB guidelines implementing that Act have not been issued as yet and we have not assessed the impact on our PL 93-638 contracting, including what advantages or disadvantages there may be from the viewpoint of the tribes.

In short, we have tools available to us that we haven't yet used or are only beginning to use which may achieve much of the benefits intended by S 2460. For that reason, and the more detailed reasons set out in our report, we do not recommend enactment of S. 2460. It may be that the tools provided to us by the Congress at this point can be improved on but we should first better determine and use existing authorities.

This concludes my prepared statement and I will be pleased to respond to any questions the Committee may have.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 22 1978

Honorable James Abourezk
Chairman
Senate Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 2460, a bill "To amend the Indian Self-Determination and Education Assistance Act".

We recommend against enactment of S. 2460 because most of its objectives can be implemented under existing law and because of specific problems with the bill set out below.

S. 2460 would require the Secretary of the Interior to make, upon request of any Indian tribe entitled to receive contracts or grants under Sections 102, 103, or 104 of PL 93-638 (25 USC 450f, 450g, and 450h), a single consolidated grant "in lieu of or in addition to contracts under sections 102 and 103" of PL 93-638. Before any tribe would be eligible for a consolidated grant, it must have submitted to the Secretary a plan setting forth a comprehensive description of what is to be carried out or provided under the grant.

The Secretary's review of the proposed plan is to include determinations on whether -

(A) the service to be rendered to the Indian beneficiaries of the program or function involved will be adequate;

(B) adequate protection of trust resources is assured;

(C) the proposed project or function can be properly completed or maintained.

The Secretary would be precluded from disapproving a plan "because of the percentage of funds devoted to a particular program, project, function, activity, or service."

Further, the Secretary's evaluation of the plan would be on the basis of "whether approval of the plan would constitute a failure as trustee to uphold the rights of the beneficiaries, and not whether the tribal policies reflected in the plan are consistent with the judgment of the reviewing official or officials."

As introduced, section 304(c) would have dealt with the applicability of GAO and other audit requirements in section 5(b) of PL 93-638 (25 U.S.C. 450c(b) to the grants under the new title III. However, we have been advised by the Committee's staff that the subsection should be corrected to read as follows:

> "(c) The provisions of section 5(d) shall not be applicable to any financial assistance provided pursuant to this title."

Section 5(d) of PL 93-638 provides:

> "Any funds paid to a financial assistance recipient [under the Act] and not expended or used for the purposes for which paid shall be repaid to the Teasury of the United States."

Administrative Alternative

Much of what S. 2460 is intended to accomplish can be done without further legislative authority.

There is nothing to prevent the use of a single contract to cover all or several BIA funded activities contracted to a tribal organization under P.L. 93-638. Indeed, such consolidated contracts are now in use although we do not now require the use of consolidated contracts. We intend to implement such a requirement for instances where tribal organizations request consolidated BIA contracts. Such contracts include appropriate provisions and funding levels for the activities involved.

We should note at this point that section 7(a) of the "Federal Grant and Cooperative Agreement Act of 1977" (P.L. 95-224) provides that "each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use type of contracts, grant agreements, or cooperative agreements as required by this Act." Sections 4, 5, and 6 of that Act describe in general terms the circumstances under which contracts, grant agreements, or cooperative agreements are to be used. Section 9 authorizes the Office of Management and Budget to issue "supplementary interpretative guidelines" to promote consistency in implementation of the Act.

The OMB guidelines have not been issued as yet and we have not determined the implications of the application of PL 95-224 to PL 93-638. It may be that the use of grant agreements and cooperative agreements would be of benefit.

Thus under current law, we not only can provide for the use of consolidation BIA contracts but authority also exists for adding the use of grants agreements and cooperative agreements if they are found to be more appropriate than contracts.

One aspect of the consolidation intended under S. 2460 would require some congressional action. Neither the BIA nor the tribal contractors may use funds under one appropriation for the purposes of another appropriation. However, practically all of the BIA programs and activities (other than construction) are included in a single appropriation item entitled "Operation of Indian Programs". Therefore, there is no statutory bar to the shifting of funds among the several activities and subactivities of that appropriation item which include:

Education:
- School Operations
- Johnson O'Malley Educational Assistance
- Continuing Education

Indian Services:
- Tribal Government Services
- Social Services
- Law Enforcement
- Housing
- Self-Determination Services
- Navajo-Hopi Settlement Program

Economic Development and Employment Programs:
- Business Enterprise Development
- Employment Development
- Road Maintenance

Natural Resources Development:
- Forestry and Agriculture
- Minerals, Mining, Irrigation and Power

Trust Responsibilities:
- Indian Rights Protection
- Real Estate and Financial Trust Services

General Management and Facilities Operations:
- Management and Administration
- Program Support Services
- Facilities Management

However, we consider ourselves bound by the Guidelines of the Appropriations Committees as to shifts of funds between activities. Enclosed is a copy of the August 1, 1977 joint letter from the Chairman of the House and Senate Appropriation Subcommittees on the Department of the Interior and Related Agencies setting out their current guidelines regarding reprograming of funds within appropriation items.

We propose to request that the above Appropriations Subcommittees modify their reprograming guidelines to permit on a demonstration basis the shifting of funds among Operation of Indian Program activities under contracts with several tribes. The extent of such shifting of funds to be allowed and the number of tribes to be given such flexibility would of course be subject to negotiation with the Subcommittees.

In addition, our regulations governing P.L. 93-638 could be revised (after the consultation procedure prescribed in section 107 of that Act (25 U.S.C. 450K)) to provide for long term planning by the tribes of the programs they now are operating under contract or plan to assume operation of in the future. We strongly believe that long-term planning should be an integral part of the budget process and to the greatest extent feasible the BIA and the tribes should adhere to such plans, thus insuring financial integrity.

Section 106(c) of P.L. 93-638 now permits contracts for periods of up to 3 years, subject to the availability of appropriations during each fiscal year of the contract term. This latter restriction is necessary to avoid the necessity of obligating more than one year's expenses out of a single year's appropriation.

Section 104(a) of PL 93-638 now authorizes grants which can provide the technical assistance which the section 302(b) proposed in S. 2460 would provide for under contracts. Section 104(a) provides for grants to tribal organizations under which they may obtain their own technical assistance without the need of requesting the BIA to contract with a third party to provide the assistance to the tribal organization.

Section 102 of PL 93-638 now limits the Secretary's authority to decline to enter into requested contracts based on substantially the same criteria as set out in the section 302(c) proposed in S. 2460. Section 102 of PL 638, like the proposed section 302(c), also requires the statement of the Secretary's objections in writting within 60 days, the provision of technical assistance to aid in overcoming the objections, and the granting of an opportunity for a hearing.

Additional Comments

The proposed new findings which S. 2460 would add to PL 93-638 do not indicate a key aspect of the policy underlying that Act. Indian tribal governing bodies are given a statutory right to contract if they so choose. There is no suggestion that tribes must so contract; they are free to decide not to contract. Any suggestion that might be interpreted as requiring tribes to contract would probably be self defeating as well as inconsistent with a policy of tribal self-determination. For this reason we believe that the language in paragraph (1) beginning on page 1, line 7 of S. 2460 misstates the policy of PL 93-638 by not stating that the

option is with the tribes rather than implying that contracting is the objective without regard to the rights of the tribes. A similar problem exists with the portion of paragraph (2) on page 2, lines 3 thru 5.

We do not know what "priorities and policies" are meant by the sentence beginning on page 2, line 7. Since the following sentence (beginning on line 9) refers to problems with "the narrow parameters of the current programs and budget allocations of the agencies", it is not clear whether the earlier reference to "priorities and policies" identified by the agencies is a separate problem and, if so, what specific examples there may be and whether administrative action could resolve the problem.

In order to make the BIA's budget process more responsive to and reflective of tribal decisions, priorities and policies, we are developing a new budget planning procedure. Tribal comments on the proposed procedure have been received and Interior Department review of the proposal is underway.

The final sentence in paragraph (2) on page 2, lines 13 thru 16, states that -

> "Duplication of effort, excessive paperwork, and inhibitions against long-term planning inherent in the contracting process have seriously undercut the intended tribal control".

The above quoted sentence would seem to suggest that the specified problems are "inherent in the contracting process" but would be avoided in a granting process. We do not believe that simple change in terminology alone would result in any significant changes. Indeed, section 106(a) of PL 93-638 now authorizes the Secretary of the Interior (and of HEW) to "waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act." No similar authority exists as to laws or regulations relating to grants or grant agreements. It follows that with the waiver authorization, it is possible for our PL 638 contracting process and requirements to be more desirable for tribal organizations than a grant process.

We agree that duplication, excess paperwork, and inhibitions against long term planning may be inherent in the fact that tribes receive contracts and grants from a number of Federal agencies and programs, each with its own set of statutory and regulatory requirements and its own administrative structure and staff which must be dealt with by the tribes. However, we

are hopeful that tribal experiences under the Joint Funding Simplification Act (88 Stat. 1604; 42 U.S. 4251 et seq.) will lead to a minimizing of such problems. The Salt River Pima-Maricopa Indian Community (Ariz.) is involved in a joint funding effort under that Act and, although no BIA funds are involved, we expect that the tribe's evaluation of that effort and any recommendations they may have could lead to simplification and better coordination of tribal programs generally. The BIA is the lead Federal Agency in a planned joint funding effort with the Cheyenne-Arapaho Tribes of Oklahoma. As with Salt River, the evaluation and recommendations of the tribes could lead to improvements in Federal funding arrangements for tribes generally.

At least to some significant extent, the "excessively long delays in receiving contract approvals" referred to in paragraph (3) on page 2, lines 17 and 18, have been the result of the newness of the PL 93-638 contracting process and the unfamiliarity of the BIA and tribal staffs with that process. Significant continuing improvement can be expected as experience is gained by both BIA and tribal staffs.

It is true that some tribal contract proposals have not been entered into because they called for more funds than could be made available. Approval of such requests but with a reduced funding level is not usually possible because the inadequate level of funding would result in inadequate service or activity levels which would require a finding that the revised proposal violates one or more of the three declination criteria set out in section 102(a) of PL 93-638.

The sentence beginning on page 2, line 21 of S. 2460 refers to problems with "the agencies' reimbursement vouchers system of payments". The Treasury Department's report to the Committee on S. 2460 states the Administration's position on the advancement of Federal funds to tribal and other contractors and grant recipients. We shall endeavor to aid tribal organizations in planning and scheduling their cash disbursements in a manner which will be compatable with the Federal system and the needs of the tribal organizations. New funding procedures for the BIA and the tribal organizations are in preparation with a completion scheduled by the end of April.

Section 301(a) on page 3 of the bill provides that any "Indian tribe or tribal organization entitled, under this Act [i.e., PL 93-6381, to enter into contracts * * * " which suggests that the consolidated grants only apply in the case of BIA and Indian Health Service administered funds. However, section 303 (page 8) states that all programs, projects, functions, activities, or services which the Departments of Interior and HEW "are authorized to perform for Indians" may be included. We believe the former interpretation is more logical at this point in time than an attempt to extend the proposed consolidated grant system to include programs and

agencies not even subject to the Title I of PL 638 contracting requirements and authorizations. However, we defer to HEW for any discussion of the problems involved with inclusion of HEW components other than the Indian Health Service.

Section 301 would not only have the BIA acting on tribal plans relating to activities within BIA areas of responsibilities and administering grants of funds appropriated to the BIA but also on plans relating to health activities and administering funds justified by and appropriated for administration by the Indian Health Service. We do not believe that such an arrangement would be desirable from either the viewpoint of the tribes or of the Federal Government. It is bound to be cumbersome and could lead to duplication of efforts by the redevelopment of health related activities within the BIA while the primary Federal responsibility and expertise relating to Indian health are in the Indian Health Service.

As indicated above, we of course believe that long-term planning by tribes could be of great benefit. However, we note that section 302 lacks any mention of social or economic goals for such tribal plans. In addition, planning periods of less than 1 year are authorized but we believe that such short planning periods are not feasible.

The last sentence of section 302(b), on page 5, lines 7 thru 13 would direct the Secretary of the Interior to provide "whatever assistance and expertise" is needed to "implement" a tribe's plan with respect to equipment, adequately trained personnel, and other necessary components. The provision may be subject to an interpretation which would require the Secretary to furnish equipment and staff to a tribal organization when the funding under the grant includes funds for such equipment and staff. Section 102(b)(2) of PL 93-638 (25 U.S.C. 450f(b)) provides a better way of stating the intended requirement.

Paragraph (4) on page 6, lines 11 thru 13, of S. 2460 would preclude the Secretary from disapproving any tribal plan "because of the percentage of funds devoted to a particular program, project, function, activity, or service." Although it is not clear, we assume that this provision is not intended to override or limit the Secretary's responsibility for the determinations required under paragraph (1) on page 5, lines 14 thru 21. We have a similar concern with the position of paragraph (5) on page 6, lines 22 thru 24, which we believe is intended to only preclude disapproval actions based on judgements not essential to sound determinations under the aforementioned paragraph (1).

Paragraph (6) on page 6, line 25 thru page 7, line 4, of the bill differs from a similar provision in section 106(h) of PL 93-638 (25 U.S.C. 450j (h)) in that the Secretary apparently would not be authorized to approve a tribal plan if it requires funding in excess of the amount that would

have been provided for BIA's operation of the program or activity involved even if it were possible to make the additional amount of funds available from savings within budgeted totals or by altering agency priorities.

The Administration strongly objects to the bill's requirement that specific budget materials accompany the President's budget request, as is required in section 302. The Administration cannot support a requirement in law to provide specific materials that are not generally applicable to all agencies' budgets. However, if this type of information is requested following the transmittal of the President's budget, the information may be provided in accord with current practice. OMB

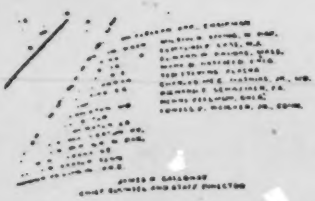
For the foregoing reasons, including the availability of existing authorities, we do not recommend enactment of S. 2460.

The Office of Management & Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Ferrit J. Secord

Assistant SECRETARY

Enclosures



United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

August 1, 1977

The Honorable Cecil D. Andrus
Secretary
Department of the Interior
Washington, D. C. 20240

Dear Secretary Andrus:

Reprogramming guidelines for agencies funded under the Department of the Interior and Related Agencies Appropriations Act have been developed and revised from time to time over a period of many years. During that same period the budget structures of many agencies have changed, and new agencies have been created. The Committees are aware that some confusion has developed among agencies over the application of existing guidelines and that changing conditions require a standardization and updating of these guidelines.

Accordingly, the Committees have developed the attached guidelines for reprogramming procedures, designed to apply uniformly to all affected agencies. Unless specific exceptions are spelled out in the Committees' reports, all agencies will be expected to comply with the guidelines.

These guidelines shall be effective immediately for any reprogramming proposals not already pending before the Committees and shall apply for the fourth quarter of FY 1977 with regard to reporting procedures.

In addition to providing uniform, up-to-date procedures, it is expected the attached guidelines, particularly the provisions of paragraph 3a, will streamline and measurably improve and facilitate reprogramming actions. The Committees wish to stress, however, that the major intent of the guidelines is to insure that any significant departure from approved program allocations will be submitted for Committee review. If any doubt should arise over whether a funding shift requires Committee review and approval, the proposal should be submitted to the Committees.

Sincerely yours,

Sidney R. Yates
Chairman, House Subcommittee
on the Department of
Interior and Related
Agencies

Robert C. Byrd
Chairman, Senate Subcommittee
on the Department of
Interior and Related
Agencies

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House Committee on Appropriations
Senate Committee on Appropriations
Subcommittees on the Department of Interior and Related Agencies

Reprogramming Procedures

1. Definition — "Reprogramming", as defined in these procedures, includes the reallocation of funds from one budget activity to another. In cases where either Committee report displays an allocation of an appropriation below the activity level, that finer level of detail shall be the basis for reprogramming. For construction accounts, a reprogramming constitutes the reallocation of funds from one construction project identified in the justifications to another. A reprogramming shall also consist of any other significant departure from the program described in the agency's budget justifications.

2. Criteria for reprogramming —

a. Any project or activity which may be deferred through reprogramming shall not later be accomplished by means of further reprogramming; but, instead, funds should again be sought for the deferred project or activity through regular appropriation processes.

b. A reprogramming should be made only when an unforeseen situation arises; and then only if postponement of the project or the activity until the next appropriation year would result in actual loss or damage. Mere convenience or desire should not be factors for consideration.

c. Reprogramming should not be employed to initiate new programs or to change allocations specifically denied, limited or increased by the Congress in the Act or the report. In cases where unforeseen events or conditions are deemed to require such changes, proposals shall be submitted in advance to the Committee, regardless of amounts involved, and be fully explained and justified.

3. Reporting and approval procedures —

a. Any proposed reprogramming must be submitted to the Committee in writing prior to implementation if it exceeds $250,000 annually or results in an increase or decrease of more than 10% annually in affected programs.

b. All reprogrammings shall be reported to the Committee quarterly and shall include cumulative totals.

c. Any significant shifts of funding among object classifications should also be reported to the Committees in a timely manner.

d. Reprogramming proposals submitted to the Committee for prior approval shall be considered approved after 30 calendar days if the Committee has posed no objection. However, agencies will be expected to extend the approval deadline if specifically requested by either Committee.

Administrative Overhead Accounts

1. For all appropriations where costs of overhead administrative expenses are funded in part from "assessments" of various budget activities within an appropriation, the assessments shall be shown in justifications under the discussion of administrative expenses (as is the case with the Bureau of Mines).

Contingency Accounts

1. For all appropriations where assessments are made against various budget activities or allocations for contingencies, the Committee expects a full explanation, separate from the justifications. The explanation shall show the amount of the assessment, the activities assessed, and the purpose of the fund. The Committee expects annual reports each year detailing the use of these funds. In no cases shall such a fund be used to finance projects and activities disapproved or limited by Congress or to finance new permanent positions or to finance programs or activities that could be foreseen and included in the normal budget review process. Contingency funds shall not be used to initiate new programs.

JOHN L. MCCLELLAN, ARK., CHAIRMAN
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JAMES P. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

August 1, 1977

Subcommittee on the Department of the Interior
and Related Agencies

MEMORANDUM

TO : Heads of Related Agencies

SUBJ: Reprogramming Guidelines

Reprogramming guidelines for agencies funded under the Department of the Interior and Related Agencies Appropriations Act have been developed and revised from time to time over a period of many years. During that same period the budget structures of many agencies have changed, and new agencies have been created. The Committees are aware that some confusion has developed among agencies over the application of existing guidelines and that changing conditions require a standardization and updating of these guidelines.

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Sidney R. Yates
Chairman, House Subcommittee
on the Department of
Interior and Related
Agencies

Robert C. Byrd
Chairman, Senate Subcommittee
on the Department of
Interior and Related
Agencies

Attachment

House Committee on Appropriations
Senate Committee on Appropriations
Subcommittees on the Department of Interior and Related Agencies

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   b. A reprogramming should be made only when an unforeseen situation arises; and then only if postponement of the project or the activity until the next appropriation year would result in actual loss or damage. Mere convenience or desire should not be factors for consideration.

   c. Reprogramming should not be employed to initiate new programs or to change allocations specifically denied, limited or increased by the Congress in the Act or the report. In cases where unforeseen events or conditions are deemed to require such changes, proposals shall be submitted in advance to the Committee, regardless of amounts involved, and be fully explained and justified.

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August 1, 1977

Chairman ABOUREZK. So, your position is that you are against S. 2460?

Mr. GERARD. That is correct, based on the authorities that we now possess.

Chairman ABOUREZK. What do you see as the objective of Public Law 638? What do you think is the central objective of that law?

Mr. GERARD. I have always felt, Mr. Chairman, the central objective of P.L. 93–638 was to provide another option for a tribal government to become active participants in the delivery of services which are primarily government services to their constituents or the members of the tribe.

Chairman ABOUREZK. You do not believe that the central purpose, then, was assumption of control by the tribes over their own destiny?

Mr. GERARD. Certainly, yes. That is implied in exercising that option. They do assume control and management and with no loss of funding if the agency had continued to operate the program.

Chairman ABOUREZK. So, what you are saying is, even though you agree that the present form of Public Law 93–638 is not working, you think it might be allowed to work if the Department is allowed to have its way to use whatever existing authority might be there?

Mr. GERARD. Mr. Chairman, I believe that 638 contains many good provisions. I have talked to a number of people who have looked at the act in relation to the rules and regulations. They are satisfied that the rules are compatible with the act.

I believe that our fundamental problem has been the manner in which it has been implemented. I would concede that it involves attitudes of employees up and down the line. I think, as the new policy centers within the Department, we have a responsibility to deal with those matters.

So, in answer to your question, I think we would like to continue to use 638 in relation to these other newer authorities that we have just cited in our statement.

Chairman ABOUREZK. You do agree with the tribes who have testified before this committee that the central purpose of turning over control to the tribes has not been accomplished through 93–638?

Mr. GERARD. I do not think it has been fully accomplished. I have not had an opportunity to study that testimony in detail. But I think there is evidence that it has not occurred in all instances.

Chairman ABOUREZK. I think, from the people we have talked to, it has not occurred in very many instances where the tribes have really assumed control over their own affairs despite the figure you cite of 537 contracts and $137 million in Public Law 93–638 contracts. The complaints by the tribes that we have heard—and we think that is probably a cross-section—indicate that the long delays, the citing of lack of funds by the agency when the tribes do attempt to contract, the effort to frustrate the purpose of 93–638 on the part of the bureaucracy, has made it virtually more of a failure than it is a success.

My question is: If you say you have the existing authority to provide bloc grants, as we have tried to cite in this amendment to 638, and that you don't need this legislation, you already have the authority, you really should not object to the passage of the legislation if the authority is there and if you intend to use that authority.

Would you care to comment on that? Why you think the legislation

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should not be passed if you do not object to the objective of the legislation?

Mr. GERARD. Basically, the administration—we take the posture that, with the authorities there, it is a matter of policy setting and implementation. I believe there are some other provisions of the legislation that the administration would probably take exception to. For example, I understand—and I have not had an opportunity to read their report fully—the Treasury Department may have some problems with the bill as drafted.

Chairman ABOUREZK. Would you tell me what legislative authority exists for the granting of bloc grants as is set out in S. 2460? Would you cite the authority?

Mr. GOODWIN. I do not think that we are saying that there is any authority for bloc grants, Mr. Chairman. What we are saying is that there is authority for single agency grants or contracts of making a single contract or grant for all of the bureau's programs; for instance, rather than——

Chairman ABOUREZK. What does that mean? I do not follow you.

Mr. GOODWIN. Rather than making a number of grants or contracts as presently exist in some Bureau offices, rather than have the tribe go directly to the Bureau and ask for 10 contracts or grants, the authority is there now for the tribes to come to the Bureau and ask for one single contract or grant.

Chairman ABOUREZK. And the authority is there for the Bureau to provide that grant?

Mr. GOODWIN. There is some question as to how far the regulations will allow us to go on that.

Chairman ABOUREZK. How far will the law allow you to go?

Mr. GOODWIN. Our preliminary indications in law are that we see a broader interpretation in the law than there is in the regulations.

Chairman ABOUREZK. What does that mean?

Mr. GOODWIN. We think that the regulations are pretty narrowly defined as to what can be contracted versus what can be granted.

Chairman ABOUREZK. When you say there is a broader area in the law than there is in the regulations, what do you mean "broader area"?

Mr. GOODWIN. We think that the people who were involved in the history of the law intended to allow more granting authority than there presently exists in the Bureau.

Chairman ABOUREZK. Would you cite the exact section you believe allows that grant authority?

Mr. GOODWIN. Mr. Chairman, under section 104(a) of Public Law 93-638: "The Secretary of Interior is authorized upon request of any Indian tribe to contract with or make a grant or grants to any tribal organization"—and it lists the types of grants that can be made.

Chairman ABOUREZK. Contract with or make grants?

Mr. GOODWIN. Yes.

Chairman ABOUREZK. Have you made any such bloc grants pursuant to or similar to the provisions of this amendment?

Mr. GOODWIN. No; we have not.

Chairman ABOUREZK. Have you told the tribes that that is available to them?

Mr. GOODWIN. No; we have not.

Chairman ABOUREZK. You haven't?

Mr. GOODWIN. No.

The regulations as currently exist say specifically what kind of grants can be made.

Chairman ABOUREZK. I wonder if I might ask you again to address the question. If you believe you have the authority, what harm can there be in passing the amendment giving the authority?

Either one of you can respond.

Mr. GERARD. Mr. Chairman, we would have to take the position again that, as a matter of policy with the statutory authority already in place, enactment of the bill would certainly be a duplication.

I think the problem up to this point, as we have readily conceded, is that we have not made full use of the authorities that are in place. Moreover, the more recent act has not yet been fully implemented because the Office of Management and Budget is still in the process of drafting the guidelines.

Chairman ABOUREZK. Well, even if it is a duplication—let's assume that it is, although I do not accept that argument—then passage of the bill cannot really harm anything; can it? It will not be a harmful amendment; will it?

Mr. GERARD. If Congress takes that position and determines that it wants to move the legislation forward, certainly we would have to analyze it in relation to the other statutes once it came out in final form.

Chairman ABOUREZK. I wonder if you would respond to my question.

It cannot be a harmful amendment—can it—if it is merely duplication of already existing law?

Mr. GERARD. If we agree that it is a duplication, then certainly it would not be harmful.

Chairman ABOUREZK. Thank you very much.

I do not have any more questions of this panel. I appreciate your appearance. Thank you.

We have some technical written questions that we would like to submit.

Mr. GERARD. We would be glad to respond.

[The questions and answers referred to follow:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 12 1978

Honorable James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We regret the delay in responding to your March 31 letter setting out further questions to be answered for the record of your March 22 hearing on S. 2460, a bill to amend the Indian Self-Determination and Education Assistance Act.

The questions and our answers are as follows:

1. Q. "In the Departmental report you indicate the Bureau is presently using consolidated contracts; how many such contracts have you entered into and with which tribes?"

A. We have entered into 44 contracts with 39 tribes, with each such contract encompassing more than one program. The tribes and the number of such contracts with each are as follows:

1. Santee Sioux Tribe of Nebraska - 2
2. Ramah Navajo - 1
3. Ute Mountain - 3
4. Laguna Pueblo - 2
5. Flathead - 1
6. Northern Cheyenne - 1
7. Crow - 1
8. Tlinget-Haida Central Council - 1
9. Metlakatla - 2
10. Tanana Chiefs Conference - 1
11. Cook Inlet Native Association - 1
12. Inupiat Community - 1
13. Association of Village Council Presidents - 1
14. Mauneluk - 1
15. Oneida Tribe of Wisconsin - 1
16. Minnesota Chippewa - 1
17. Sault Ste. Marie - 1

p. 128 blank

18. Navajo - 1
19. Quinault - 1
20. Shoshone-Bannock - 1
21. Hoh - 1
22. Lummi - 1
23. Makah - 1
24. Nisqually - 1
25. Muckleshoot - 1
26. Nooksack - 1
27. Point-No-Point Treaty Council - 1
28. Puyallup - 1
29. Quileute - 1
30. Skagit System Cooperative - 1
31. Squaxin Island Tribal Council - 1
32. Stillaquamish - 1
33. Suquamish - 1
34. Tulalip - 1
35. Warm Springs - 1
36. Umatilla - 1
37. Creek Nation of Oklahoma - 1
38. Seminole (Florida) - 2
39. Miccosukee - 1

2. Q. "Would you describe how the Bureau's consolidated contract works?"

A. Briefly, the contract has a common face page, common general terms and conditions and a separate description of the requirements for each program covered under the contract. All programs may be included in the contract from its start or new programs can be added by modification as they come along.

3. Q. "Would you provide the Committee with copies of these consolidated contracts?"

A. Copies of those from the Portland Area have been provided to the Committee's staff and we have been advised that the others are not needed. However, the other copies are available upon request.

4. Q. "Has the use of a consolidated contract resulted in a more streamlined application process?"

A. It is really too early to say as only a few of the Area Offices have moved in this direction. Also its potential for increasing efficiency depends to a great extent on the tribes. If all programs to be included in the contract are included in the initial application and are therefore reviewed concurrently, the process should move faster. However, if the programs are submitted separately the potential savings is largely, although not entirely, lost.

5. Q. "You indicate in your report that you plan to request a modification of the Appropriation Committee's reprogramming guidelines to permit a shifting of funds among operation of Indian program activities; what are the goals and objectives of your demonstration projects?"

A. The goals and objectives of the demonstration would be to provide tribal governments with greater flexibility in the administration of programs and services for their members and with greater ability to meeting changing priorities due to changing conditions.

Consideration is also being given to a FY 1980 BIA budget and appropriation structure which would facilitate such shifts without the need for a reprogramming request.

6. Q. "Would you describe the new funding procedure you plan to implement at the end of April as noted on page 6 of the departmental report?"

A. The procedures consist of instructions for cash advances or letter-of-credit advances. When the annual advance to a recipient organization is less than $120,000 or when there is not an expected continuing relationship between the BIA and the recipient organization of at least one year, advances are to be made by direct Treasury check scheduled through the BIA. When the BIA has, or expects to have a continuing relationship with the recipient organization for at least a year involving advances aggregating at least $120,000 annually, advances will be made by the Treasury Regional Disbursing Office System of Advancing by letter-of-credit. In either case, the recipient organization can obtain advance funding for immediate disbursing needs. We will forward a copy of the new proposed procedures as soon as they are available.

7. Q. "Please cite what statutory or regulatory authority exists to achieve which specific objectives of S. 2460?"

A. The Federal Grant and Cooperative Agreement Act (PL 95-224) and the Joint Funding Simplification Act (42 U.S.C. 4251). The Treasury Fiscal Requirements Manual, Vol. 1, Part 6, part 2000, provides regulation and guidance for advance payments to grantees and contractors.

On May 19, 1978, the Office of Management and Budget published for comment their proposed "Guidance" for "Implementation of Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224)". A copy of that publication is enclosed for your information.

8. Q. "Identify which regulations you are considering modifying to more closely conform with the purpose of S. 2460?"

A. At this time we cannot identify specific regulations that may need to be modified. We plan a cooperative effort with the Cheyenne-Arapaho Tribe in regard to a joint funding proposal they have submitted. One purpose of this effort is to identify any regulations that may inhibit or prevent inclusion of P.L. 93-638 contracts in joint funding projects.

9. Q. "On the basis of information available to the BIA, have attempts to apply the Joint Simplification Act to an Indian Tribe been shown to be practical or functional."

A. At this point there is insufficient evidence on which to base a conclusion. We do believe that the Joint Funding Simplification Act is potentially beneficial and it is for this reason that we are in support of the Cheyenne-Arapaho Tribe's effort.

10. Q. "Would you personnally recommend a Presidential veto of the provision to append the Tribe by needs assessment to the President's budget request?"

A. No, but I believe that our answer to question 12 below provides a reasonable alternative.

11. Q. "What is your view of the merit of basing the BIA budget on an assessment of tribal needs?"

A. We are endeavoring to assure that the BIA's budget is based on an assessment of tribal needs and tribal determinations of priorities.

12. Q. "On the last page of testimony you stated that the Administration objects as a matter of law to providing specific material not generally applicable to all agency budgets. What do you understand to be the underlying reason for this objection if Congress makes the determination that it needs to know more about a specific area of the President's budget?"

A. The objection is to the information having to accompany and be part of the President's budget. There is no objection to the Department providing such information subsequent to submission of the President's budget.

13. Q. "If you intend to continue to follow the practice of refusing to contract because of insufficient funds, as page 6 indicates, do you have any objection to amending the same appeal provisions for such refusal as for the three proper declination criteria?"

A. Such a revision of the regulations is being considered.

Sincerely,

Deputy Assistant Secretary--Indian Affairs

25-601 O - 78 - 10

[Subsequent to the hearing the following letter was received from the Office of Management and Budget:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 27 1978

Honorable James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request of February 8, 1978, for the views of this Office on S. 2460, a bill "To amend the Indian Self-Determination and Education Assistance Act."

We share the views expressed by the Departments of the Interior and Health, Education, and Welfare during their testimony on S. 2460. Also, in its report to you dated March 22, 1978, the Department of the Interior detailed its reasons for opposing the enactment of S. 2460. We concur with the views expressed by the two departments and, accordingly, recommend against enactment of S. 2460.

Sincerely,

James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

Chairman ABOUREZK. The second group of witnesses is the Department of Health, Education, and Welfare: Emery Johnson, Director of the Indian Health Service.

Mr. Johnson, welcome to the hearing.

Your prepared statement will be inserted.

[Mr. Johnson's prepared statement follows:]

STATEMENT

BY

EMERY JOHNSON, M.D.

DIRECTOR

INDIAN HEALTH SERVICE

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

MARCH 22, 1978

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee to discuss this proposed amendment to the Indian Self-Determination and Education Assistance Act, P.L. 93-638. As we understand S. 2460, it would establish an additional option available to the Indian tribes by which they could elect to receive a single consolidated grant for all or any part of programs fundable by contracts under Sections 102 and 103 of P.L. 93-638.

As we have consistently stated, the Indian Health Service fully supports Indian manning and management of IHS program activities when, where and to such extents as the law allows and the tribes may wish. We, therefore, support in principal, proposals that would give greater flexibility and additional options to the Indian tribes in their determination of how best to plan, organize, operate and evaluate their health servic[illegible].

We support the concept in S.2460 that would give the tribes the alternative of receiving a consolidated grant. It is our view, however, that the Indian Health Service already has the authorization for such a consolidated approach under P.L. 93-638 since a tribe could, if it so chose, request a contract for all health services currently provided to it by the Indian Health Service. In any event, the recently-enacted Federal Grant and Cooperative Agreement Act of 1977, P.L. 95-224, as eventually implemented, may cause those contracts to be replaced by grants or cooperative agreements. Our

grant authority under Section 104(b) of P.L. 93-638 is also broad enough to accomplish most of the goals of S.2460 except that its use, unlike 638 contracting, is discretionary.

Another positive aspect of this proposal is the impetus it would give to long range tribal planning. The comprehensive nature of such planning could bring to tribal governance the same recognition and need to deal with the ordering of scarce resources between conflicting needs as the recent Congressional Budget and Impoundment Control Act of 1974, P.L. 93-344, brought to the Congress itself.

I should like, at this time, to point out that the Secretary of Health, Education, and Welfare is already encouraging such planning in the health field through our program of affording each tribe the opportunity to develop tribal specific health plans. This program is part of the implementation of the Indian Health Care Improvement Act, P.L. 94-437. These tribal specific health plans will, to a great extent, be the basis upon which the Secretary will, in 1980, report to Congress his recommendation concerning any additional authorizations needed to achieve the purposes of P.L. 94-437. We are pleased to report that most tribes have taken this opportunity and are developing tribal specific health plans. This purpose aside, however, we are confident that these tribal specific health plans will prove to be of great value in meeting the health needs of the individual tribes and in enabling them to determine their health priorities and what aspects they wish to takeover under P.L. 93-638.

There are a number of problems with S.2460 as currently written. The first of these deals with financial accountability. As I understand the bill, the Secretary of the Interior would be authorized to make grants of funds appropriated to the Department of Health, Education, and Welfare (DHEW). Though the responsibility for justifying and answering to Congress for the use of these funds would remain with DHEW we would appear to have no defined role in either the planning or in the execution stage. In the Department's view it would be preferable to assure that financial accountability be in the same hands as the granting authority even if this meant transferring an appropriation amount from DHEW to the Department of the Interior sufficient to cover the grants made by the Secretary of the Interior for purposes which are the responsibility of DHEW.

The second and more important problem I see with the current proposal has to do with the responsibility of the Department, acting through the Indian Health Service, to raise the health status of Indians and Alaska Native by assuring that health services are available at the necessary quantitative and qualitiative levels. The bill provides that the Secretary of the Interior will make the grant and need only consult with the Secretary of Health, Education, and Welfare. The Secretary of the Interior has sole responsibility for approving the plan upon which any grant is based. Finally, as I indicated above, DHEW has no role in the execution of the grant. Yet, I think it is fair to say that it is within DHEW where is found the largest available resource of experienced people, trained and skilled in determining the efficacy of both proposed and operating health programs.

I am concerned that neither the plan nor the grant need reflect an adequate review by health professionals. Without a requirement for such a review, I do not see how the Secretary of the Interior can properly determine either that "... the service to be rendered to the Indian beneficiaries of the particular program or function planned [in this case health] will be adequate ..." or that "... the proposed project or function in the plan can be properly completed or maintained by the plan..."--both of which are requirements of the bill.

The same concern with how the government will assure fulfillment of its responsibilities to the Indians and Alaska Natives exists with the provisions covering operation of the programs covered by the consolidated grant. It appears that the intent of section 304 is that the tribes shall determine the priorities as long as the total spent is within the grant amount. This would weaken the planning function since funds could be transferred from one project to another without any concurrence by the granting agency. Again, how does this allow either the Secretary of the Interior to assure that the beneficiaries will receive adequate services or that the project or function can be properly completed or maintained or allow the Secretary of Health, Education, and Welfare to carry out his responsibilities. It is possible that the intent of the proposal was to allow shifting of funds between categories within an overall program area (e.g., shifting funds from immunization to health education within the overall health program) but this is not clear.

There are a number of ambiguities in the proposal that need clarification. For example, section 303 states that all programs which DHEW is authorized to perform for Indians may be included in the plan. I assume this includes programs run by such Departmental organizations as the Administration for Native Americans as well as individual projects benefitting Indians funded under any of the various programs administered by the Department. Section 301 seems to indicate that the consolidated grant could cover only projects fundable under Sections 102 and 103 of P.L. 93-638. If the intent is that the consolidated grant may include any and all Departmental programs, there are administrative problems which will have to be addressed by those responsible for the individual Department programs.

The problems, accompanying the early stages in the implementation and administration of P.L. 93-638 have to a great extent been alleviated. This process continues and, hopefully, will be aided as a result of the Federal Grant and Cooperative Agreement Act of 1977, which I mentioned earlier. The basic purpose of this act is to differentiate between Federal assistance relationships and Federal procurement activities. Our experience has shown that the lack of a clear differentiation between Federal procurement and P.L. 93-638 contracts with tribes have, in fact, caused some problems of the kind spelled out in the "Finding and Purpose" of P.L. 95-224.

P.L. 93-638 has been law for only slightly more than three years and has been funded for less than a year and a half. I do not think this is sufficient time to conclude that the intent of Congress has been frustrated because there has been no meaningful transfer of control of basic Government services to the tribes. There have, of course, been problems. But I believe that the Indian people are the ones to decide to what extent they wish to use P.L. 93-638. The Indian Self-Determination Act is new to the Indian community and generally they have chosen to approach it cautiously. Many appear to consider it a termination policy in the guise of self-determination. Their caution should not be combined with our problems in implementing a new, far reaching,law to declare that the law is ineffective or its purpose has been frustrated.

This concludes my prepared statement, Mr. Chairman. I will be happy to answer any questions you or the members of the Committee may have.

STATEMENT OF EMERY JOHNSON, M.D., DIRECTOR, INDIAN HEALTH SERVICE, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. JOHNSON. Thank you, Mr. Chairman.

We basically support in principle the bill before you, any proposal that would give greater flexibility and additional options to the tribes.

I would like to point out that we in the Indian Health Service already have the authority to give both bloc contracts and bloc grants. Our section 104 of Public Law 93-638 is a little different from the Bureau's. It provides that we can give bloc grants for operations. So, we do not see that as adding any new authority to what we already have.

Chairman ABOUREZK. Then you agree with the Bureau of Indian Affairs and the Assistant Secretary that this amendment certainly would not be harmful for legislative purposes?

Dr. JOHNSON. The amendment that provides for bloc grants in and of itself is not harmful. I think there are certain aspects of it that give us some concern. I would like to address my remarks to those.

First, I would like to point out the concept in the bill for long-range tribal planning is, again, something that we would endorse. I would like to point out again that the Secretary of HEW has, in fact, implemented an option for the tribes to do this kind of planning in terms of his implementation plan for the Indian Health Care Improvement Act. In the implementation plan that was sent to the Congress last September the Secretary outlined the option for the tribes to engage in the basic health planning process.

At this point, most tribes have picked up on that. So, we will have tribal health plans a little more than a year from now, if everything goes on schedule. Each tribe that has chosen to do so will in fact have a comprehensive health plan. That will be available to the Secretary. It is our understanding that the Department will plan to use that as the basis of the Secretary's report to the Congress that is required by 437. So, for the first time, the Congress will have available to it a tribe-by-tribe health plan developed by the tribes.

I would point out that there is no requirement that tribes plan. This is clearly their option to plan, but they have been given that opportunity. For the most part, they have very gladly accepted it.

With those two things, we feel that this act is quite consistent with what we have in mind.

We do have, however, a couple of problems with the law as now written and an area in which we see some ambiguity in the law that gives the Department some concern.

The first problem that we see with the law as written is that dealing with fiscal accountability. As the law is written, it would give the Secretary of Interior the authority to give the bloc grant with only a requirement that there be consultation with the Secretary of HEW.

The Department finds that that is difficult to go along with in the sense that the Secretary of HEW would be held accountable for the appropriation. Yet, he would have no access to either the giving of the grant or the monitoring of the grant.

The suggestion for the Department in the bill would be that, when the Secretary of the Interior gave such a grant for health programs, for example, or any activity that was covered under HEW's appropriation, that amount of funds would be transferred to the Secretary of the Interior so that the accountability for those funds would rest with the agent that is in charge of the grant.

The second basic problem that we see with the bill really follows, in a sense, from that same concern. There is nothing in the bill that seems to require that there be any health review or consideration of the tribal plans——

Chairman ABOUREZK. By the Indian Health Service.

Dr. JOHNSON. Or by the Department of Health, Education, and Welfare.

Chairman ABOUREZK. When it deals with health——

Dr. JOHNSON. That is correct.

The same thing would be true—going back to what I will mention about what is actually encompassed by this act. The Department would have the same problem if other departmental programs that were enacted under other statutes were also included in this bloc grant. There is no way for the Department to maintain its accountability——

Chairman ABOUREZK. I just have to say that I sort of see your point. But the reason for this particular procedure is to avoid having the tribes go to two different agencies. It is slow enough to go to one agency, but to have to go to two is crushing; it is almost impossible.

We would be happy to work with you on trying to give the amount of accountability that is needed to HEW and BIA without slowing the process down.

Dr. JOHNSON. There are mechanisms, Mr. Chairman, through which that could be accomplished.

Chairman ABOUREZK. Would it be all right if we had the legislative staff work with you then?

Dr. JOHNSON. We would be glad to, Mr. Chairman.

The final point that I would like to make is that the Department is unsure as to what is actually covered under this law. Section 303 states that all programs which HEW is authorized to perform for Indians may be included in the plan.

Our reading of that would be that any program funded by the Department that provides services to Indians, regardless under what statute, would be subject. This would include not only the administration on Native Americans but perhaps welfare programs, Head Start, whatever it might be, where the recipients were Indian groups.

That gives the Department considerable concern in the administrative process by which that might be carried out and the potential jurisdictional problems with other statutes and other committees.

On the other hand, section 301 of this bill suggests that these consolidated grants would only cover projects fundable by sections 102 and 103 of Public Law 93-638, which is the Indian Health Service as far as the Department is concerned.

If the latter is correct, then the Department's problems are considered reduced. If it is the former, then the Department, again, has a good bit of concern about the accountability and the jurisdictional problems that that would provide.

That completes my statement, Mr. Chairman.

Chairman ABOUREZK. Do I understand, Dr. Johnson, that you support the bill with those amendments that we have talked about, if the amendments could be worked to your satisfaction? The IHS could support the bill?

Dr. JOHNSON. Yes. We see nothing inconsistent in the bill with what basically we already have the authority to do. It does add one more flexibility to the tribe.

I think, Mr. Chairman, we ought to be very careful in looking at the accountability. Under the Indian Health Care Improvement Act there are very specific congressional mandates that are identified in terms of scope of health service, quality, and so forth.

If it were the will of the Congress to provide funding, irrespective of how the money was appropriated or for whatever purpose—and this is another part of the bill that gives us some concern, the statement in there that the grantee may change his plan without, apparently, any contact with the granting agent—one could see the potential then that money which would be appropriated for health could end up not providing health services at all but providing something entirely different.

I think, if one wants to do that and if that is the intent of the act, then it seems to me that one might look at something even simpler, and that is to simply go to a revenue sharing program in which there really needs to be no Federal intervention whatever. That would carry out that intent of the act.

On the other hand, if there is still an intent that certain other statutes and Federal responsibility to be carried out—for example, a responsibility for health of Indian people—then I think we have to sort through this act and look at it a little bit differently.

Chairman ABOUREZK. I want to ask a question on a different subject if I might.

You and I talked earlier about the private health contracting that some of the tribes have done with hospitals and medical centers and so on around the country. The last time I talked to you, I think the Indian Health Service was behind some $1.5 million in payments to these private hospitals. Some of them, incidentally, in South Dakota have called me directly and complained about it. I think that is about half of the national debt out in South Dakota.

Dr. JOHNSON. I wish it was. [Laughter.]

Chairman ABOUREZK. Have you been able to work out any way to pay these hospitals what is owed to them?

Dr. JOHNSON. The Department testified about a week ago before the House Interior Appropriations Subcommittee that there were certain potential administrative funds available that, given authorization by the Congress, could be spent for that purpose.

That is a little bit beyond my understanding of where they are—the so-called M accounts that the Department has.

Chairman ABOUREZK. It needs congressional authorization?

Dr. JOHNSON. Yes. It needs congressional authority in an appropriation act which permits us to spend money. It is basically prior year money. It must be released by the Congress before it could be spent for that purpose.

[Material received from Indian Health Service follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES ADMINISTRATION
ROCKVILLE, MARYLAND 20852

APR 17 1978

INDIAN HEALTH SERVICE

April 14, 1978

The Honorable James Abourezk
Chairman, Senate Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The information on S. 2460 requested in your letter of March 31, 1978 follows:

Question No. 1:

Please specify by what mechanisms the Tribe could obtain a single grant for its BIA & IHS programs using only one application procedure, one accounting procedure and one evaluation report without violating the IHS accountability?

Answer No. 1:

To our knowledge, the only authority which could be used to enable a tribe to obtain joint funding for both its Indian Health Service and Bureau of Indian Affairs programs is the Joint Funding Simplification Act of 1974, P.L. 93-510. This act permits a wide range of administrative arrangements aimed at enabling an applicant for Federal assistance to better utilize and coordinate resources from a number of programs. The Act permits such things as: uniform provisions for financial administration, and timing of Federal payments; establishment of joint management funds for a project; single agency administration and project supervision of a multi-agency funded project; and the creation of joint or common application review and processing.

The Indian tribes are covered by P.L. 93-510. The Indian Health Service, however, has had very little experience with P.L. 93-510. I understand that several tribes in Oklahoma are considering applying for a joint funding grant to cover programs funded by the Indian

Health Service and the Bureau of Indian Affairs. In addition, the Salt River Tribe has been utilizing joint funding procedures for several years now--initially under OMB Circular A111 and now under P.L. 93-510. The Indian Health Service has had little direct involvement, but there is an alcoholism component to the joint funding project and this component is one of the projects being transferred from the Alcohol, Drug Abuse, and Mental Health Administration to the Indian Health Service. The Administration for Native Americans has had considerable input into the project. It is my understanding that the Department of Health, Education, and Welfare is the lead agency in the Salt River Project which is under the overall purview of the Indian committee of the Western Federal Regional Council. Though limited, there does appear to be some experience to draw upon.

Question No. 2:

Since both BIA and IHS must change its 638 regulations due to P.L. 95-224, do you intend to work with the BIA to achieve identical procedures and substantially the same regulations?

a. If the answer to 2 is yes, what problems might you encounter from HEW regulations?

b. If the answer to 2 is no, specify practical or legal reasons why you should not have identical procedures and substantially the same regulations?

Answer No. 2:

The Federal Grant and Cooperative Agreement Act of 1977, P.L. 95-224, authorizes the Director of the Office of Management and Budget to issue interpretative guidelines for the implementation of this act. There are no provisions in the act itself that would require the P.L. 93-638 regulations to be revised. Until the Office of Management and Budget guidelines are issued, we cannot determine which, if any, Departmental regulations might have to be revised or to what extent they might have to be revised. Should any P.L. 93-638 regulations require substantive revision, we will strive to have both the regulations and the procedures match those of the Bureau of Indian Affairs to the greatest extent possible.

Question No. 3:

In your testimony on page 5, you mention that the problems accompanying the early stages in the implementation and administration of P.L. 93-638 have to a great extent been alleviated. Please identify the problems you are referring to, and which have been alleviated?

Answer No. 3:

The problems referred to in my opening statement involves those normal to the beginning of a new program effort. These involved such things as publishing the regulations, training staff, establishing grant and contract capability, providing information to the Indian people on the new law and defining the health delivery systems involved. In addition to establishing the machinery with which to implement the Act, there were many legal questions that had to be addressed by the HEW Office of General Counsel of HEW and this process too is proceeding smoothly.

Question No. 4:

On page 2, you speak of "Tribal specific health plans." How do such plans compare with the comprehensive Tribal plan and needs assessment as set forth in S. 2460?

Answer No. 4:

Section 701 of the Indian Health Care Improvement Act, P.L. 94-437 requires the Secretary of Health, Education and Welfare to report to Congress concerning any additional authorizations for fiscal years 1981 through 1984. In order to obtain that data necessary for this report, and as part of the implementation plan for P.L. 94-437, it was decided to offer each tribe the opportunity to develop tribal specific health plans (TSAD) It should be noted that this system includes urban specific health plans since the report required by section 701 must cover all programs authorized under P.L. 94-437.

The format for developing Tribal Specific Health Plans for FY1981 - 1984 includes the: (1) scope of the Plan, (2) descriptive data on the service area, (3) demographic and health data, (4) total health needs for the tribe, (5) health resources currently available, (6) unmet needs, and (7) approach and plan for overcoming the unmet health needs.

The plans developed under S. 2460 may cover "any, some, or all "programs covered by S. 2460. It would therefore, be possible for an S. 2460 plan to be wider or narrower in scope than a TSHP. The S. 2460 plan could cover up to 10 years while the TSHP would intially cover only 4 years. The S. 2460 plan covers function performed by the tribe or for the tribe under the consolidated grant. The TSHP deals with the total health needs and all health resources available to meet these needs. The S. 2460 plan would be an intricate part of a grant request. TSHP is not a request for specific funding, but rather part of a system to both assess total health needs and to develop justification for budget authorizations and appropriations to meet unmet needs.

Question No. 5:

Please describe the mechanisms with which you are monitoring the delivery of a new training and technical assistance funds appropriated under the authority of P.L. 93-638 to the Tribes.

Answer No. 5:

IHS monitors the delivery of training and technical assistance funds provided under P.L. 93-638 through the (TRAIS) information system. The system has been programmed to accept quarterly reports from the Area and Program Offices, and produces a consolidated report for three types of technical assistance, five types of suppliers from whom such technical assistance is acquired, six specific IHS activities which generate and provide the technical assistance, and the costs obligated for each category during the current reporting period.

This system provides management personnel in the Headquarters an overview of what is required and provided, as well as an awareness of funds being expended and residual funding balances for future technical assistance requirements. A copy of the mandatory quarterly report is enclosed for your information. (Enclosure No. 1)

Question No. 6:

Are any P.L. 93-638 training and technical assistance monies now being used directly or indirectly for IHS salaries, travel support, employee conferences, or other overhead expenditures?

Answer No. 6:

Such funds are used to meet tribal requests for technical assistance and training and to improve IHS administration of programs that are under tribal management. These monies may provide additional IHS P.L. 93-638 capabilities for training and technical assistance operations by IHS staff.

Question No. 7:

What training and technical assistance monies under 'Category B' were allocated to the Navajo Area Office in FY78? Were they to be used in conjunction with the Navajo Tribe's health contracts? What specific activities were these funds used for? Why did the Navajo Tribe's health programs not receive any Category C funds for FY78? Which other health contracts received no Category C funds in FY78? How much Category D and E funds were allocated to the Navajo Area Office for FY78 Navajo Tribal Health contracts? What specific activities were these funds used for?

Answer No. 7:

A. What training and technical assistance monies under Category B were allocated to the Navajo Area Office in FY78?

In FY78, $123,000 was allocated to the Navajo Area. As of the end of the 3rd quarter, $118,352 was unobligated and $4,647.50 has been obligated for special activities.

B. Were they to be used in conjunction with the Navajo Tribe's health contracts?

Yes, the specific use of these funds are listed in the next question.

C. What specific activities were these funds used for?

They are used for the items discussed in Question #6 on the Navajo Reservation these funds were used: (1) to develop IHS staff capabilities to meet Navajo tribal requests for technical assistance and training, (2) to improve IHS administration of programs that are under Navajo tribal management, (3) to provide technical assistance (including training) to the Navajo tribe in their preparation for program management, and (4) to provide additional P.L. 93-638 support for program operation by IHS staff not otherwise available.

D. Why did the Navajo Tribe's health programs not receive any Category C funds for FY78.

Category C, Indirect Administrative Cost, funds were only distributed to Areas and Programs that had unmet needs for these type of funds and to those Area and Programs who could not fund their unmet indirect administrative cost needs out of existing funds. The Navajo Area was able to fund all Indirect Administrative Costs out of its existing funds which eliminated the need to obligate Category C funds to the Navajo Area in FY78.

E. Which other health contracts received no Category C funds in FY78?

The list of such contracts is displayed in Enclosure No. 2. (See Enclosure #2).

F. How much Category D and E funds were allocated to the Navajo Area Office of FY78 Navajo tribal health contracts?

In FY78 $104,000 ($93,000 and $10,900 mandatories) of Category D funds, Personnel Support, were allocated to the Navajo Area. There were $117,000 of Category E, Non-reoccuring, funds allocated.

G. What specific activities were these funds used for:

Category E funds are distributed as non-recurring amounts to assist IHS in direct support of implement tion of P.L. 93-638 program and projects.

We appreciate the clarification in your letter that other HEW programs are not intended to be within the purview of S. 2460. We assume that the language in the bill will be amended to reflect this position.

Thank you for your continued interest in the health of Indian people. Should you need additional information, we will be happy to oblige.

Sincerely yours,

Emery A. Johnson, M.D.
Assistant Surgeon General
Director, Indian Health Service

Enclosures

ENCLOSURE 1

SUBJECT: P.L. 93-638 TECHNICAL ASSISTANCE ACTIVITY REPORT (QUARTERLY) FY78

DUE DATE IN I.H.S. HEADQUARTERS: APR 6 1978

2ND - 3RD - 4TH QUARTER (CIRCLE ONE)

I. BUDGET ALLOCATION (IN DOLLARS FOR FY-78) $_____

II. AMOUNT OBLIGATED

A. TYPE OF TECHNICAL ASSISTANCE

1. PRE-CONTRACTUAL TECHNICAL ASSISTANCE $_____
2. CONTRACT SUPPORT $_____
3. ALL OTHER TECHNICAL SUPPORT $_____

B. TYPE OF SUPPLIERS

1. INDIAN $_____
2. NON-INDIAN $_____
3. GOVERNMENT $_____
4. INTERNAL $_____
5. OTHER $_____

C. ACTIVITY

1. MANAGEMENT OF HEALTH PROGRAMS $_____
2. STAFFING $_____
3. PLANNING $_____
4. DEVELOPMENTAL ACTIVITIES $_____
5. FINANCIAL MANAGEMENT $_____
6. OTHER $_____

D. TOTAL OBLIGATED THIS QUARTER $_____

E. BALANCE $_____

I.H.S. HQ. CONTACT: E. F. MOON 443-5204

Enclosure #2

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Albuquerque

CONTRACTOR	AMOUNT
Isleta Pueblo	$10,588
Santa Clara	$38.169
Eight Northern Indian Pueblos	$90,034
Ute Mountain Ute	$38.403
Southern Ute Tribe	$36,519
Ute Mountain Ute Tribe	$62,525
Sanat Clara Pueblo	$55,803
Zuni Pueblo	$146,308
Six Sandoval Indian Pueblos	$237,973
Pueblo of Laguna	$167,016
Zuni Pueblo	$49,000
Zuni Pueblo	$37,017

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Bemidji

CONTRACTOR	AMOUNT
Menominee	$1,209,000
Stockbridge-Munsee	$272,774
Mille Lacs	$208,315
Fond du Lac	$18,943
Mille Lacs	$28,414
Leech Lake	$151,654
Grand Portage	$9,455
Upper Sioux	$9,487
Lower Sioux	$9,461
Prairie Island	$9.439
Shakopee	$9.461
White Earth	$119,736
Minnesota Sioux Inter-Tribal	$9,461

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Portland

CONTRACTOR	AMOUNT
Squaxin Island	$48,883
Nooksack	$24,148
Puget Sound Health Board	$52,759
Puyallup	$52,207
Lummi	$36,674
Lummi	$29,253

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Sacramento

CONTRACTOR	AMOUNT
Tri-County Indian Health Project, Inc.	
California Tribal Chairmans Association	
Indian Health Council, Inc.	
Modoc Indian Health Project	

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Tucson

CONTRACTOR	AMOUNT
All Papago Tribal Health Contracts	

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Oklahoma

CONTRACTOR	AMOUNT
Cheyenne Arapaho Tribes of Oklahoma	$25,000

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Bemidji

CONTRACTOR	AMOUNT
Red Cliff	$28,376
Michigan Indian Health Board	$20,167

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Billings

CONTRACTOR	AMOUNT
Flathead Tribal Health Board	$73,292
Rocky Boy Health Board	$41,160
Flathead Tribal Health Board	$30,000
Rocky Boy Health Board	$18,000
Rocky Boy Health Board	$50,000
Northern Cheyenne Board of Health	$50,000
Blackfeet Tribal Health Department	$50,000
Blackfeet Tribal Council	$46,255

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Alaska

CONTRACTOR	AMOUNT
North Slope Borough	$417,173

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA USET

CONTRACTOR	AMOUNT
County of St. Regis Mohawk	$760,000
Seneca Nation of Indians	$87,775

7E. ATTACHMENT

HEALTH CONTRACTS THAT DID NOT RECEIVE
CATEGORY C FUNDS

AREA Phoenix

CONTRACTOR	AMOUNT
Ralph E. Scissions	$16,500.00
Hopi Tribal Council	$19,080.00
Hopi Tribal Council	$ 9,600.00
Gila River Indian Community	$20,583.72
Quechan Tribe	$14,145.00
San Carlos Apache Tribe	$73,246.22

Chairman ABOUREZK. I have no more questions.

Mr. GERARD. Mr. Chairman, I wonder if I could just make one more additional point?

Chairman ABOUREZK. Yes.

Mr. GERARD. Dr. Johnson has expressed HEW's concern that the bill as drafted would authorize the Department of Interior to really assume the lead in the health area, which we all know statutorily they are charged with administering.

Our exploration of the Joint Funding and Simplification Act reveals that, even though Interior or BIA might be designated as the lead agency, this would not relieve the other participating agencies in the funding process of their ongoing monitoring and evaluations responsibilities.

We would be more than willing to continue to work with your staff, as we develop the Cheyenne and Arapahoe proposals.

But I think this distinction ought to go on the record.

Chairman ABOUREZK. Thank you very much.

We have no more witnesses scheduled this morning. We appreciate the appearance of all witnesses.

The hearings are adjourned.

[Whereupon, at 10:35 a.m., the hearing was adjourned.]